15-614 20

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 265

L. M. LINCOLN, W. W. CHESEBRO, LEONARD ROSE, M. [illegible] BURNS, ANTONIO [illegible], SAMUEL O'NEIL, AND [illegible] GEROTH, PLAINTIFFS IN ERROR,

vs.

IRA G. FRENCH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED SEPTEMBER 26, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 516.

L. M. LINCOLN, W. W. CROUSE, LEONARD HOYT, R. SHERBURN, ANTONIO DE SILVA, SAMUEL O'NESS, AND SAMUEL ONESTI, PLAINTIFF IN ERRORS,

vs.

IRA G. FRENCH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

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1 *Complaint.*

In the circuit court of the United States in and for the northern district of California, November 8th, 1866.

IRA G. FRENCH, PLAINTIFF, *vs.* THOMAS EDWARDS, L. LINCOLN, L. HOYT, W. W. Crouse, Huntoon, Crowell, Mrs. Buckmaster, Mrs. S. Hall, Mrs. E. Lake, E. Paine, A. Carothers, T. Carothers, Wm. Carothers, D. E. Hastings, R. Sherburn, F. Davis, W. Tildon, H. B. Gales, Cook, J. Lake, F. Windrick, Antone , Joseph , David Morel, John Doe, Richard Roe, James Jackson, Peter White, John Brown, John Smith, and John Roe, defendants.	Complaint in ejectment.

The plaintiff, Ira G. French, a citizen and resident of the State of New York, by S. F. & J. Reynolds, his attorneys, complains of the above-named defendants—all citizens of the State of California
2 aforesaid—and for cause of action avers that on the first day of March, 1862, he, the said plaintiff, was the owner in fee simple, and was seized in his own right in fee simple absolute, and was then, and still is, as such owner, entitled to the possession of the following described tract and parcel of land, situated in the town of Sutter, county of Sacramento, and State of California, bounded on the north, east, and south by lands formerly granted by the Mexican Government to one John A. Sutter, and on the west by the Sacramento River, commencing at the corner of Main and Water streets of said town of Sutter, at the east bank of said Sacramento River; running thence in a northerly direction up and along said river one-half of a mile; thence in an easterly direction one mile; thence southerly, at right angles, one-half mile; and thence westerly, at right angles, one mile, to the place of beginning, being one-half of the original survey town of Sutterville, formerly so called, now called Sutter, and being the same tract of land conveyed by said John A. Sutter to one L. W. Hastings, on the 30th of November, 1849; said premises being a part of the land
3 granted to the said John A. Sutter, under the name of "New Helvetia," and containing 320 acres.

And the plaintiff further says, that, being so seized of the said premises as aforesaid, the said defendants afterwards, to wit, on the said first day of March, 1862, unlawfully entered into and upon said premises, and they have ever since, and do now, unlawfully withhold from the plaintiff the possession thereof, to his damage twenty thousand dollars.

And the plaintiff further says that he is a citizen of the State of New York, and resides in said State; and that the defendants are all citizens of the said State of California.

The plaintiff further says that the Christian names of Huntoon, Crowell, Cook, and Mrs. Buckmaster are unknown to him, as also the full names of the defendants, Antone and Joseph; and that the names John Doe, Richard Roe, James Jackson, Peter White, John Brown, John Smith, and John Roe, are fictitious names,

representing defendants whose real names are unknown to the
4 plaintiff. And the plaintiff prays that the real and full names of all the defendants may be inserted when ascertained.

And the plaintiff further says that the value of the use and occupation of said premises since said first day of March, 1862, is the sum of twenty thousand dollars.

Wherefore said plaintiff prays that he may recover possession of said lands, and have judgment for the restitution of said land and premises, and that he may recover the sum of twenty thousand dollars as damages for withholding the same from him, as aforesaid, and for the rents and profits thereof, besides costs.

S. F. AND J. RAYNOLDS,
Attorneys for Plaintiff.

(Endorsed:) Filed November 8, 1866. Geo. C. Gorham, clerk, by S. Neall, D. C.

5 *Answer of Sam'l Onesti.*

In the circuit court of the United States in and for the northern district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
SAMUEL ONESTI (WHO IS SUED BY THE NAME of James Jackson), impleaded with Thomas Edwards, L. Lincoln, and others.

Now comes the said defendant, Samuel Onesti (who is sued by the name of James Jackson), and for his separate answer to the complaint of the said plaintiff filed in said cause answers as follows, to-wit: He denies each and every allegation in the said complaint contained.

And for a further and other answer to said complaint, this defendant denies that the said Ira G. French is a citizen or resident of the State of New York, or was a citizen or resident of the State of New York at the time of the commencement of this suit. And he denies that said
6 defendants are all citizens of the State of California, or were all citizens of the State of California at the time of the commencement of this suit; this defendant denies that he is a citizen of the State California. He denies that on the first day of March, 1862 (or ever at any time), he the said plaintiff was the owner in fee simple (or the owner in any manner or decree whatever), or that he was seized in his own right (or in the right of any person), in fee simple absolute, or in any manner or decree whatever, or was then, or still is as such (supposed) owner, entitled to the possession of the lands described in said complaint, or any part of said lands.

And this defendant denies that the said defendants, or either or any of them, afterwards, to wit, on the said first day of March, 1862 (or ever at any time), unlawfully (or otherwise) entered into or upon said premises (or any part thereof), or have ever since (or at any time), or do
7 now unlawfully (or otherwise) withhold from the plaintiff the possession thereof (or of any part of the same), to his (the plaintiff's) damage twenty thousand dollars (or any sum whatever).

And this defendant denies that the value of the use or occupation (or use and occupation) of said premises since said first day of March, 1862 (or since any other date), is the sum of twenty thousand dollars (or any other sum whatever).

And for a further and separate answer to said complaint this defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, this defendant, because he says that neither the said plaintiff, his ancestors, predecessors in interest, nor grantors was or were seized or possessed of the lands or premises described in said complaint (or any part of said lands or premises), within five years next immediately preceding the commencement of this suit, and this he is ready to verify. Wherefore he prays judgment
8 if the said plaintiff ought to have or maintain his aforesaid action thereof against this defendant.

And for a further and other answer to said complaint this defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against this defendant, because he says that neither the said plaintiff, his ancestors, predecessors in interest, nor grantors was or were seized or possessed of the lands or premises described in said complaint (or any part of said lands or premises) within two years next immediately before the commencement of this suit, and this he, this defendant, is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against this defendant.

And for a further and separate answer to that part of said complaint which claims damages for the detention of said lands prior to the
9 8th day of November, A. D. 1864, this defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against this defendant for the supposed damage last above described, because he says that the same did not, nor did any part thereof, accrue within two years next immediately before the commencement of this suit, and this he, this defendant, is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against this defendant for the said supposed damages last aforesaid.

Wherefore this defendant prays for a separate verdict and judgment, and to be hence dismissed with his costs.

JAMES McCABE,
Att'y for Def't, Fearri Onesti.

(Endorsed:) Filed Dec. 12th, 1866. Geo. C. Gorham, cl'k, by Dan'l T. Sullivan, deputy.

10 *Answer of Thos. Edwards et al.*

In the circuit court of the United States, in the State of California.

IRA T. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET AL.

Thomas Edwards, L. M. Lincoln, A. Carothers, W. P. Carothers (sued as Wm. Carothers), J. P. Carothers (sued as T. Carothers), W. W. Crause, L. Hoyt, R. Sherburn, J. Lake, G. A. Cook, Antonio G. De Silva, Samuel O'Ness, and Sarah Hall, impleaded with the other defendants named in said complaint, come in their proper persons, and for answer say, on information and belief, that the plaintiff has no interest in the said cause, nor in the premises in controversy, nor had he at the time of the commencement of this suit, but claimed title to said premises solely under and by virtue of a conveyance made to him by one

R. H. Vance, who at the time of making said conveyance, and at the time of commencing this suit was a citizen of the State of Cali-
11 fornia, and who is the real party in this suit, and that the plaintiff named in the complaint is merely nominal and colorable, and that the suit herein is a controversy between the said Vance and these defendants, all of whom were, at the time this suit was commenced, citizens of the same State of California.

And the said defendants further say, on information and belief, that the said conveyance from the said Vance to the said plaintiff was merely colorable and without consideration, and that said suit was brought for the purpose of committing a fraud upon the jurisdiction of said court.

And this the said defendants are ready to verify. Therefore they pray whether this court can or will take cognizance of the action aforesaid.

DEC. 24*th*, 1866.

THOMPSON CAMPBELL,
Att'y for Def'ts.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

L. M. Lincoln, one of the above-named defendants, being duly
12 sworn, on his oath says that he verily believes the foregoing plea to be true in substance and in fact, and he further deposes that the statements therein contained are true, of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

L. M. LINCOLN.

Sworn to and subscribed before me this 24th day of December, A. D. 1866.

[SEAL.] J. H. BLOOD,
Notary Public.

(Endorsed:) Filed Dec. 24th, 1866. Geo. C. Gorham, cl'k, by S. Neall, D. C.

13 *Answer of Antone Silver.*

In the circuit court of the United States in and for the northern district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
ANTONE SILVER (WHO IS SUED BY THE NAME of Antone), defendant, impleaded with Thomas Edwards, L. Lincoln, and others.

Now comes the said defendant Antone Silver (who is sued by the name of Antone), and for his separate answer to the complaint of the said plaintiff in this cause filed, answers as follows, to wit:

1st. He denies each and every allegation in the said complaint contained.

2d. And for a further and other answer to said complaint this defendant denies that said Ira G. French is a citizen or resident of the State of New York or was a citizen or resident of the State of New
14 York at the time of the commencement of this suit. And he denies that said defendants are all citizens of the State of California, or were citizens of said State at the time of the commencement

of this suit; this defendant denies that he is a citizen of the State of California. He denies that on the first day of March, 1862 (or ever at any time), he, the said plaintiff, was the owner in fee simple or the owner in any manner or degree whatever, or that he was seized in his own right (or in the right of any person), in fee simple absolute (or in any manner or degree whatever), or was then, or still is, as such (supposed) owner, entitled to the possession of the lands described in said complaint, or any part of said lands. And this defendant denies that the said defendants or either, or any of them, afterwards, to wit, on the said first day of March, 1862 (or ever at any time), unlawfully (or otherwise), entered into or upon said premises (or any part thereof), or have
15 ever since (or at any time), or do now, unlawfully (or otherwise), withhold from the plaintiff the possession thereof (or of any part of the same), to his (the plaintiff's) damages twenty thousand dollars (or any sum whatever). And this defendant denies that the value of the use or occupation (or use and occupation) of said premises since said first day of March, 1862 (or since any other date), is the sum of twenty thousand dollars (or any other sum whatever).

3rd. And for a further and separate answer to said complaint, this defendant says that a certain part of the property described in said complaint this defendant claims the right of possession as tenant to one John Bells, which said part of said property so claimed by this defendant is designated and known as follows, to wit, a piece of land formerly known as the Stewart lot situated in said town of Sutter, containing ten acres & $\frac{54}{100}$. Also that a certain other part of said property described in said complaint this defendant claims the right of possession of as tenant to one Richard Sherburn, which said part of said property so claimed by this defendant as last aforesaid as tenant to said Sherburn, is described as being in the town of Sutter, and abutting on the lands of D. E. Hastings, which lies upon the south of the said piece of land, to which this defendant is entitled as aforesaid, and bounded on north by lands claimed by J. Lake, containing about eight acres. That the said John Bell is the owner in fee simple absolute of the piece of said land first above described, and the said Richard Sherburn is the owner in fee simple absolute of the piece of said land last above described.

4th. And for a further and other answer to said complaint this
17 defendant says that said plaintiff ought not to have or maintain his aforesaid action thereof against this defendant, because he says that neither the said plaintiff, his ancestors, predecessors in interest, nor grantors, was or were seized or possessed of the land or premises described in said complaint (or any part of said lands or premises) within five years next immediately before the commencement of this suit, and this he is ready to verify; wherefore he prays judgment if the said plaintiff ought to have, or maintain his aforesaid action thereof against this defendant.

5th. And for a further and other answer to said complaint, this defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against this defendant, because he says that neither the said plaintiff, his ancestors, predecessors in interest, nor grantors, was or were seized or possessed of the lands or premises
18 described in said complaint (or any part of said lands or premises), within two years next immediately before the commencement of this suit, and this he, this defendant, is ready to verify; wherefore, he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against this defendant.

6th. And for a further and other answer to that part of said complaint which claims damages for the detention of said land prior to the 8th day of November, A. D. 1864, this defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against this defendant for the supposed damage last above described, because he says that the same did not, nor did any part thereof, accrue within two years next immediately before the commencement of this suit; and this he, this defendant, is ready to verify.

Wherefore, he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against this defendant, for
19 the said supposed damages last aforesaid.

Wherefore this defendant prays for a separate verdict and judgment, and to be hence dismissed, with his costs.

JAMES McCABE,
Att'y for Def't Antone Silver.

(Endorsed:) Filed Dec. 12th, 1866. Geo. C. Gorham, clerk, by Dan'l T. Sullivan, deputy.

20 *Answer of Antone De Silva et al.*

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
ANTONIO DE SILVA, DAVID MOREL, AND Samuel O. Ness, empleaded with Thomas Edwards et als.

Antonio de Silva, David Morel, and Samuel O. Ness, defendants in the above-entitled action, empleaded with Thomas Edwards and the other defendants, came by their attorney, Thompson Campbell, and for their separate answer to the complaint in the above-entitled action say that they are not guilty of the trespass and ejectment mentioned in plaintiff's complaint.

Wherefore the said defendants pray judgment against the said plaintiff, and for their costs of suit.

THOMPSON CAMPBELL,
Att'y for Def'ts.

21 (Endorsed:) Filed M'ch 16th, '67. G. C. Gorham, cl'k, p. Wheeler, D. C. Service admitted. Reynolds.

22 *Answer of L. M. Lincoln.*

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
L. M. LINCOLN, IMPLEADED WITH THOMAS EDwards, et. als.

L. M. Lincoln, one of the defendants in the above-entitled cause, impleaded with Thomas Edwards and the other defendants, comes by his attorney, Thomas Campbell, and for his separate answer to the complaint in the above-entitled action says that he is not guilty of the

trespass and ejectment mentioned in plaintiff's complaint, and he denies each and every allegation of said complaint.

For a counter claim to the alleged cause of action for damages for value and occupation of said premises, the said defendant alleges
23 that at the time of the commencement of this action he was holding the premises under the color of title adversely to the claims of the said plaintiff in good faith, and that while so holding he made permanent and valuable improvements on said premises, so held and occupied by him as aforesaid, of the value of two hundred dollars; which said amount this defendant claims to recoupe by way of counter claim of the said plaintiff's demand, to the extent that may be proved against him on the trial of this action, and asks judgment the plaintiff for the excess.

The said defendant, furthering answering, says that the plaintiff's right to recover any sum as damages for the use and occupation of the premises in the said complaint mentioned, prior to the 14th day of November, 1863, is barred by the statute of limitations of the said State of California, and which statute is by the said defendant plead
24 in bar of the plaintiff's right to recover damages against the said defendant.

Wherefore the said defendant prays judgment against the plaintiff and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

(Endorsed:) Filed M'ch 16, '67. G. C. Gorham, cl'k. P. Wheeler, dep.

Service admitted.

REYNOLDS.

25 *Answer of W. W. Crouse.*

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
W. W. CROUSE IMPLEADED WITH THOMAS Edwards et als.

W. W. Crouse, one of the defendants in the above-entitled action, impleaded with Thomas Edwards and the other defendants, comes by his attorney, Thompson Campbell, and for his separate answer to the complaint in the above entitled action says that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint.

And for a further and separate defense the said defendant says that at the time of the suing out of the writ in this action and before that time, to wit, on the first day of March, A. D. 1862, he was and ever
26 since has been and now is seized as owner in fee, and entitled to the possession of the following described parcels or lots of land, being part of the premises described in plaintiff's complaint, and which is bounded and described as follows: Bounded on the north by the road leading from Sutterville to the Georgeana slough road and lands of Fred Wendrick, on the east by lands of the said Wendrick and the east line of the land described in plaintiff's complaint, on the south by the government line and lands of Leonard Hoyt, and on the west by a fence, said tract containing in all about sixty acres; also another tract of about two acres situate and lying on the bank of the Sacramento River, on which is a blacksmith shop and other buildings.

And he avers that he does not occupy any other part or parcel of the premises described in said plaintiff's complaint.

For a counter claim to the alleged cause of action for damages
27 for the use and occupation of said premises, the said defendant alleges that at the time of the commencement of this action he was holding the premises so described and occupied by him as aforesaid under color of title, in good faith, and adversely to the claims of the said plaintiff, and that while so holding said premises as aforesaid, he made permanent and valuable improvements thereon, of great value, to wit, of the value of one thousand dollars, which said amount this defendant claims to recoupe by way of counter claims to the plaintiff's demand to the extent that may be proved against him on the trial of this action, and asks judgment against the plaintiff for the excess.

And for a further counter claim to the plaintiff alleged cause of action for damages, the said defendant alleges that during the time he so held and occupied said premises he paid delinquent taxes that were
28 levied on said premises, and on the improvements thereon, to the amount of two hundred dollars, which last mentioned amount together with interest thereon at the rate of five per cent. per month from the date of the payment of such taxes until the commencement of this action, this defendant claims shall be deducted from the amount that may be proved against him on the trial of this action.

The said defendant, furthering answering, says that the plaintiff's right to recover any sum as damages for the use and occupation of the premises so occupied by the said defendant as aforesaid, prior to the 1st day of March A. D. 1868, is barred by the statute of limitations of the said State of California, and which statute is by said defendant plead in bar of the plaintiff's right to recover damages against the said defendant.

29 And for a further and separate defense the defendant avers that neither the plaintiff, his ancestors, predecessors, or grantors were possessed or seized of that portion of the premises described in said plaintiff's complaint, as occupied and possessed by the said defendant as hereinbefore particularly described and set forth, within five years before the commencement of this action.

Wherefore the said defendant prays judgment against the said plaintiff, and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

MARCH 16th, 1867.

(Endorsed :) Filed M'ch 16, 1867. Geo. C. Gorham, cl'k, p. Wheeler, dep.

Service is admitted March 16, 1867.

REYNOLDS.

30 *Answer of R. Sherburn.*

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
R. SHERBURN IMPLEADED WITH THOMAS EDwards et als.

R. Sherburn, one of the defendants in the above entitled cause impleaded with Thomas Edwards, and the defendants, comes by his attorney, Thomas Campbell, and for his separate answer to the complaint

n the above entitled action says that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint.

And for a further and separate defense says, that at the time of the suing out of this writ in the action and before that time, to wit: on the 1st day of March, A. D. 1862, the defendant was and ever since
31 has been and now is seized as owner in fee and entitled to the possession of the following described parcels or lot of ground, being apart of the premises described in plaintiff's complaint, and which is bounded and described as follows: Bounded on the north by lands of Lincoln and Lake, on the east by a fence, on the south by D. Hastings' land, and on the west by the Sacramento River, containing in all about twenty-two acres, and he avers that he does not occupy any other part or parcel of the premises described in said plaintiff's complaint.

For a counter claim to the alleged cause of action for damages for the value and occupation of said premises, the said defendant alleges that at the time of the commencement of this action, he was holding the premises so described and occupied, as aforesaid, under color of
32 title in good faith and adversely to the claims of the said plaintiff, and that while so holding said premises he made permanent and valuable improvements thereon, to wit, of the value of two thousand dollars, which said amount this defendant claims shall be deducted from the amount that may be proved against him on the trial of this action, and he asks judgment against the plaintiff for the excess.

And for a further counter to the plaintiff's cause of action for damages, the said defendant alleges that during the time he so held and occupied said premises, so claimed by the plaintiff in his said complaint, he paid delinquent taxes that were levied on said premises and on the improvements thereon, to the amount of five hundred dollars, which last mentioned amount, together with interest at the rate of five per cent. per month thereon, from the date of the payment of such
33 taxes until of this action, this defendant claims shall be deducted from the amount that may be proved against him in the trial of this action.

The said defendant further*ing* answering, says that the plaintiff's right to recover any sum as damages for the use and occupation of the premises so possessed and occupied by the said as aforesaid, prior to the 14th day of November, A. D. 1862, is barred by the statute of limitations of the said State of California, and which statute is, by the said plaintiff, plead in bar of the plaintiff's right to recover damages against the said defendant.

And, for a further and separate defense, the defendant avers that neither the plaintiff, his ancestors, predecessors, or grantors, were possessed or seized of that portion of the premises described in the
34 complaint, as occupied and possessed by the said defendant, as hereinbefore particularly set forth, within five years before the commencement of this action.

Wherefore the said defendant prays judgment against the said plaintiff, and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

(Endorsed:) Filed M'ch 16, 1867. G. C. Gorham, cl'k. P. Wheeler, dep.

Service admitted.

REYNOLDS.

35 *Answer of Leonard Hoyt.*

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
LEONARD HOYT IMPLEADED WITH JEFFERSON Lake et als.

Leonard Hoyt, one of the defendants in the above entitled action, impleaded with Jefferson Lake and the other defendants, comes by his attorney, Thompson Campbell, and for his separate answer to the complaint in the above entitled action says, that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint.

And for a further and separate defense the said defendant says that at the time of the suing out of the writ in this action and before that time,
36 to wit, on the first day of March, A. D. 1862, the defendant was, and ever since has been, and now is seized as owner in fee and entitled to the possession to the following described parcel or lot of ground, being a part of the premises described in plaintiff's complaint, and which is bounded and described as follows: Bounded on the north by a ditch fence and by land claimed by I. P. Can and others; on the east by land owned and occupied by Stewart and Lowe; on the south by a ditch fence and by lands of B. C. St. John and one Tolls; and on the west by the Sutter Lake, containing about sixty acres, more or less; and he avers that he does not occupy any other part or parcel of the premises described in said plaintiff's complaint.

For a counter claim to the alleged cause of action for damages for the use and occupation of said premises the said defendant alleges that
37 at the time of the commencement of this action he was holding the premises so described and occupied by him as aforesaid under color of title, in good faith and adversely to the claims of the said plaintiff, and that while so holding said premises he made permanent and value improvements on the same of great value, to wit, of the value of one thousand dollars, which said amount this defendant claims to recoupe by way of counter claim to the said plaintiff's demand to the extent that may be proved against him on the trial of this action and asks judgment against the plaintiff for the excess.

And for a further counter claim to the plaintiff's alleged cause of action for damages, the said defendant alleges that during the time he so held and occupied said premises he paid delinquent taxes that had
38 been levied on said premises and on the improvements thereon to the amount of two hundred dollars, which last mentioned amount, together with interest thereon at the rate of five per cent. per month from the date of the payment of such taxes until the commencement of this action, this defendant claims shall be deducted from the amount that may be proved against him on the trial of this action.

The said defendant further*ing* answering, says that the plaintiff's right to recover any sum as damages for the use and occupation of the premises so occupied by the said defendant as aforesaid prior to the 14 day of November, A. D. 1863, is barred by the statute of limitation of the said State of California, and which statute is by the said defendant plead in bar of the plaintiff's right to recover damages against the said defendant.

And for a further and separate defense the defendant avers that

neither the plaintiff, his ancestors, predecessor, or grantors were
29 possessed or seized of that portion of the premises described in the complaint as occupied and possessed by the said defendant as hereinbefore particularly described and set forth within five years before the commencement of this action.

Wherefore the said defendant prays judgment of the said plaintiff, and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

(Endorsed:) Filed M'ch 16th, 1867. G. C. Gorham, cl'k, p'r Wheeler, dep.

Service admitted.

REYNOLDS.

40 *Order substituting true for fictitious names.*

At a stated term of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room in the city of San Francisco, on Friday, the 13th day of September, in the year of our Lord one thousand eight hundred and seventy-two.

Present: The Honorable Lorenzo Sawyer, judge.

IRA G. FRENCH
vs.
THOS. EDWARDS, ET AL.

On motion of plaintiff's attorney it is ordered that the complaint herein be, and the same is hereby, amended by inserting therein the name of W. T. Caruthers instead of Wm. Caruthers, J. T. Caruthers instead of T. Caruthers; also the name of Antonio de Selva instead of Antone, and Samuel O'Ness instead of James Jackson.

I hereby certify that the foregoing is a full and true copy of an original order made and entered in the above-entitled action.

41 Attest my hand and the seal of said circuit court this 22d day of November, A. D. 1872.

[SEAL.] L. S. B. SAWYER, *Clerk.*

(Endorsed:) Filed 22d November, 1872. L. S. B. Sawyer, clerk.

42 *Amended complaint.*

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS, L. M. LINCOLN, W. W. Crouse, Leonard Hoyt, Wm. P. Carothers, executor of the last will and testament of A. Carothers, deceased, R. Sherburn, Jefferson Lake, Antone De Sitva, David Morrell, Samuel O'Nesté, Samuel O'Ness, defendants.

1st. And now come the plaintiff and, by leave of the court first had and obtained, files this amended complaint; and said plaintiff, Ira G.

French, a citizen and resident of the State of New York, complains of the above-named defendants, all citizen' of the State of California
43 aforesaid, and for cause of action, avers that on the first day of March, 1862, he, the said plaintiff, was the owner in fee simple, and was seized in his own right in fee simple absolute, and was then and still is, as such owner, entitled to the possession of the following-described tract and parcel of land situated in the town of Sutter, county of Sacramento and State of California, bounded on the north, east, and south by lands formerly granted by the Mexican Government to one John A. Sutter, and on the west by the Sacramento River, commencing at the corner of Main and Water streets of said town of Sutter, at the east bank of said Sacramento River; running thence, in a northerly direction, up and along said river one-half of a mile; thence in an easterly direction one mile; thence southerly, at right angles, one-half mile; and thence westerly, at right angles, one mile, to the place of beginning, being one-half of the original surveyed town of Sutterville, formerly so called, now called Sutter, and being the same tract of land con-
44 veyed by said John A. Sutter to one L. W. Hastings on the 30th of November, 1849, said premises being a part of the land granted to the said John A. Sutter under the name of "New Helvetia," and containing 320 acres.

2d. And the plaintiff further says, that, being so seized of the said premises as aforesaid, the said defendants afterwards, to wit, on the first day of March, 1862, unlawfully entered into and upon said premises, and they have ever since and do now unlawfully withhold from the plaintiff the possession thereof, to his damage twenty thousand dollars.

3d. And the plaintiff further says that he is a citizen of the State of New York and resides in said States, and that the defendants are all citizens of the State of California.

4th. And the plaintiff further says that the value of the rents and profits of said premises since said first day of March, 1862, has been the sum of $2,500 per annum.

Wherefore said plaintiff prays that he may recover possession
45 of said lands, and have judgment for the restitution of said lands and premises, and he may recover the sum of twenty thousand dollars as damages for withholding the same from him as aforesaid, and for the rents and profits thereof, besides costs.

JOHN REYNOLDS,
Att'y for Plaintiff.

(Endorsed:)
Service of the within amended complaint admitted February 9, 1877.
J. W. ARMSTRONG &
J. H. McKUNE,
Att'ys for Def'ts.

Filed 8 February, 1877.

L. S. B. SAWYER, *Clerk.*

Amended complaint.

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET AL. DEFENDANTS.

And now comes the plaintiff and leave of the court files this amendment to the 3d paragraph of his amended complaint herein, as follows, to wit:

After the word "is" and before the words "a citizen," insert the words "and was at the commencement of this action," also strike out the word "are" before the words "all citizens" and insert instead thereof the words "were at the commencement of this action."

JOHN REYNOLDS,
Pltf's Att'y.

(Endorsed:) Filed 5th March, 1877. L. S. B. Sawyer, clerk.

47 *Answer of Lincoln.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET ALS., DEFENDANTS.

The defendant, L. M. Lincoln, answers the amended complaint of the plaintiff filed herein, and denies each and every allegation in said amended complaint contained.

And the defendant, L. M. Lincoln, further answering said amended complaint, alleges:

I. That on the 23d day of October, 1865, a judgment was duly made, given, and entered of record in the district court of the 6th judicial district in and for the county of Sacramento, and State of California, in favor of the people of the State of California, as plaintiff, against one R. H. Vance et als., and the land described in said amended complaint as defendant's,
48 for the sum of one hundred and thirteen $\frac{75}{100}$ dollars, in gold and silver coin, for delinquent taxes of said county and State, levied for the year 1864, and costs of suit taxed at thirty-seven $\frac{65}{100}$ dollars and accruing costs, and said judgment so made and entered in said district court directed and decreed that said land be sold or so much thereof as would be necessary to pay said judgment and all costs.

II. That a certified copy of said judgment was duly made and issued out the clerk's office of said district court to and received by the sheriff of the said county of Sacramento, James McClatchy, on the 23rd day of November, 1865, by which said sheriff was directed and commanded to sell said land or so much thereof as should be necessary to satisfy said judgment and all costs.

III. That after the receipt of said certified copy of said judg-
49 ment and before the return day thereof, said sheriff did give due and legal notice of the time and place of the sale according to the statute in such cases made and provided, and in pursuance of such notice said sheriff did, on the 18th day of December, 1865, at the time and place in said notice named, sell at public auction the land aforesaid to this defendant, L. M. Lincoln, for the sum of one hundred and seventy-five $\frac{42}{100}$ dollars, the amount of said judgment and all costs, that being the smallest quantity or portion of said land which any person offered to take and pay said judgment and costs.

IV. That afterwards and since the commencement of this action the said sheriff, James McClatchy, by virtue of the said judgment, said certified copy thereof and the statute in such case made and provided, and in pursuance of said sale and in consideration of the sum of one hundred and seventy-five $\frac{42}{100}$ dollars, paid by the said defendant, L. M.
50 Lincoln, to said sheriff at the time of said sale in accordance with his bid, said sheriff did, on the 11th day of June, 1872, by deed

under his hand and seal convey to the said Lincoln said land to recover which this action was brought, and said defendant Lincoln is now the owner thereof whose title dates by relation from the time of its sale aforesaid.

And the said defendant Lincoln, further answering said amended complaint, alleges:

I. That since the commencement of this action on or about the 27th day of September, 1867, the plaintiff Ira G. French, by deed under his hand and seal conveyed all his right, title, and interest in and to said land to R. H. Vance, and said plaintiff did then assign and transfer the several causes of action set forth in said amended complaint to said Vance.

II. That said R. H. Vance on or about the 17th day of February, 1871, by deed under his hand and seal conveyed all his right, title,
51 and interest in and to said land to John Reynolds, and said Vance did then and there assign and transfer its several causes of action set forth in said amended complaint to said John Reynolds, who thereby became, and is, the real party in interest in this action; and there has been no order or decree of this court allowing this action to be continued in the name of said plaintiff for the benefit of said John Reynolds; and said John Reynolds is, and for more than fifteen years has been, a citizen and resident of the State of California; and the said defendant, L. M. Lincoln, and all the other defendants herein, are, and have been for more that fifteen years, citizens and residents of said State; and, by reason of the several premises set forth in this defense, said plaintiff should not further prosecute this action in this court.

And the defendant, L. M. Lincoln, further answering said amended complaint, alleges:

52 I. That since this action was commenced, to wit, on or about the 27th day of September, 1867, said Ira G. French, the said plaintiff, by his deed, under his hand and seal, conveyed all his right, title, and interest in and to said land to R. H. Vance, who thereby acquired all the title the plaintiff had to said land at the time this action was commenced; and said Vance thereafter, to wit, on or about the 4th day of December, 1867, commenced his action in the district court of the 6th judicial district in and for the county of Sacramento and State of California against the defendant, L. M. Lincoln, and the other defendants herein, to recover the possession of said land upon the title so acquired thereto from said plaintiff; and in his complaint in said action said Vance alleged that he was the owner of said land in fee simple on the 27th day of September, 1867, and that he was still the owner thereof in fee simple at the time of the commencement of said action, and that the defendants were in the possession of the
53 same; and said defendant, L. M. Lincoln, and the other defendants herein, made and filed their answer to said complaint in said action, and in said answer they admitted that they were in possession of said lands at the time of the commencement of said action; but they and each of them denied, by their said answer, that said Vance was the owner of said land at the time stated in his said complaint, or at any time, and they therein claimed and aver'ed that they were the owners thereof at the several times stated in the complaint of said Vance and entitled *or* the possession of the same; and the defendant L. M. Lincoln says that the title now declared upon in said amended complaint is the same title to said land conveyed by said plaintiff to said Vance as aforesaid, and the same title to said land was in issue in said action, and was therein tried and determined by the judgment of said district

court in favor of the defendant L. M. Lincoln and the other defendants against said Vance, and said judgment still remains in full force and effect.

54 II. That John Reynolds was the attorney for said Vance in said action, and, as such attorney, had notice of the judgment rendered therein, and, having such notice, on or about the 17th day of February, 1871, he took a conveyance from said Vance of all his right, title, and interest in and to said land, and he (said John Reynolds) has no other title to said land than the title so acquired from said Vance, and is bound by said judgment.

And said defendant, L. M. Lincoln, further answering said amended complaint, alleges:

I. That said plaintiff should not have or recover from the defendant Lincoln any damages, rents, issues, or profits for said land or any part thereof which accrued after the 27th of September, 1867, for that the said plaintiff did on that day by deed under his hand and seal convey all his right, title, and interest in and to said land to R. H. Vance.

55 And said defendant, L. M. Lincoln, further answering, alleges that the causes of action stated in said amended complaint against him for damages, rents, and profits of said land, did not accrue to plaintiff within three years next before the commencement of this action, and said cause' of action are barred by section 17 of an act of the legislature of said State passed April 22nd, 1850, entitled "An act defining the time for commencing of civil actions," and also by sections 338 of the code of civil procedure of this State.

And said defendant, L. M. Lincoln, further answering said amended complaint, avers that all causes of action for damages, rents, issues, and profits mentioned in said amended complaint, which accrued more than three years before the filing of said amended complaint, are barred by subdivision two of section 338 of the code of civil procedure of said State.

Wherefore this defendant prays:

1st. That this defendant have verdict, decision, findings and
56 judgment separate from the other defendants.

2nd. That plaintiff take nothing by his action.

3rd. That defendant have judgment for his costs.

4th. That he have such other and further relief as he may show himself entitled to at the trial.

JOHN H. McKUNE AND
JOHN W. ARMSTRONG,
Att'ys for Def'ts L. M. Lincoln.

(Endorsed:) Filed 14th March, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

57 *Answer of R. Shuburn.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET ALS., DEFENDANTS.

The defendant, R. Shuburn, answers the amended complaint of the plaintiff, filed herein on the 8th day of February, 1877, and denies each and every allegation in said amended complaint contained.

And the defendant, R. Shuburn, further answering said amended complaint, alleges:

1st. That on the 23d day of October, 1865, a judgment was duly made, given and entered of record in the district court of the 6th judicial district, in and for the county of Sacramento, and State of California, in favor of the people of the State of California, as plaintiff, against one R. H. Vance et als., and the land described in said amended complaint, as defendants, for the sum of one hundred and thirteen 75-100
58 dollars in gold and silver coin for delinquent taxes of said county and State levied for the year 1864, and costs of suit taxed at thirty-seven 65-100 dollars, and accruing costs, and said judgment so made and entered in said district court directed and decreed that said land be sold, or so much thereof as would be necessary to pay said judgment and all costs.

II. That a certified copy of said judgment was duly made and issued out of the clerk's office of said district court to and received by the sheriff of the said county of Sacramento, James McClatchy, on the 23d day of November, 1865, by which said sheriff was directed and commanded to sell said land, or so much thereof as should be necessary to satisfy said judgment and costs.

III. That after the receipt of said certified copy of said judgment and before the return day thereof said sheriff did give due and legal
59 notice of the time and place of sale according to the statute in such case made and provided, and in pursuance of such notice said sheriff did, on the 18th of December, 1865, at the time and place in said notice named, sell at public auction the land aforesaid to L. M. Lincoln, one of the defendants, for the sum of one hundred and seventy-five 42-100 dollars in the coin aforesaid, being the amount of said judgment and costs, and that being the smallest quantity or portion of said land which any person offered to take and pay the said judgment and costs.

IV. That afterwards, and since the commencement of this action, the said sheriff, James McClatchy, by virtue of said judgment, said certified copy thereof, and the statute in such case made and provided, and in pursuance of said sale and in consideration of the sum of one hundred and seventy-five 42-100 dollars paid by said L. M. Lincoln in the coin aforesaid to said sheriff at the time of said sale, in accordance
60 with his bill for said land—said sheriff did under his hand and seal convey to the said L. M. Lincoln, one of the defendants herein, said land, and said L. M. Lincoln is now the owner thereof and entitled to the possession of the same, and his title thereto dates by relation from the date of the sale above mentioned.

And the defendant, R. Shuburn, further answering said amended complaint, alleges:

I. That since the commencement of this action, on or about the 27th day of September, 1867, the plaintiff, Ira G. French, by deed under his hand and seal, conveyed all his right, title and interest in and to said land to R. H. Vance, and said plaintiff did then assign and transfer the several causes of action set forth in said amended complaint to said Vance.

II. That said R. H. Vance, on or about the 17th day of February, 1871, by deed under his hand and seal, conveyed all his right, title, and interest in and to said land to John Reynolds, and said Vance did then and there assign and transfer the several causes of action set
61 forth in said amended complaint to said John Reynolds, who thereby became and is the real party in interest in this action,

and there has been no order or decree of this court allowing this action to be continued in the name of said plaintiff for the benefit of said John Reynolds; and said John Reynolds is and for more than fifteen years last past has been a citizen and resident of the State of California; and the said defendant R. Shuburn and all the other defendants herein are and have been for more than fifteen years citizens and residents of this State; and by reason of the several premises set forth in this defense said plaintiff should not further prosecute this action in this court.

And the defendant, R. Shuburn, further answering said amended complaint, alleges:

I. That since this action was commenced, to wit, on or about the 27th day of September, 1869, said Ira G. French, said plaintiff, by his deed under his hand and seal conveyed all his right, title, and
62 interest in and to said land to R. H. Vance, who thereby acquired all the title which the said plaintiff had to said land at the time this action was commenced, and said Vance thereafter, to wit, on or about the 4th day of December, 1867, commenced his action in the district court of the 6th judicial district, in and for the county of Sacramento and State of California, against the defendant R. Shuburn, and the other defendants herein to recover the possession of said land upon the title so acquired thereto from said plaintiff, and in his complaint in said action said Vance alleged that he was the owner of said land, in fee simple, on the 27th day of September, 1867, and that he was still the owner thereof in fee simple at the time of the commencement of said action, and that defendants were in possession of the same, and said defendant R. Shuburn and the other defendants herein made and filed their answer to said complaint in said action, and in said answer they admitted that they were in possession of said land at
63 the time of the commencement of said action, but they and each of them denied by their said answer that said Vance was the owner of said land at the time stated in his said complaint or at any other time, and they therein claimed and averred that they were the owners at the several times stated in the complaint of said Vance, and entitled to the possession of same, and the defendant, R. Shuburn, says, that the title now declared upon in said amended complaint is the same title to said land conveyed by said plaintiff to said Vance as aforesaid; and the same title was in issue in said action and was therein tried and determined by the judgment of said district court in favor of the defendant R. Shuburn, and the other defendants, against said Vance, and said judgment still remains in full force and effect.

II. That John Reynolds was the attorney for said Vance in said action and as such attorney had notice of the judgment rendered
64 therein, and having such notice, on or about the 17th day of February, 1871, he took a conveyance from said Vance of all his right, title, and interest in and to said land, and he, said John Reynolds, has no other title to said land than the title so acquired from said Vance and is bound by said judgment.

And the defendant, R. Shuburn, further answering said amended complaint, alleges:

I. That said plaintiff should not have or recover from defendant, R. Shuburn, any damages, rents, issues, or profits, for said land or any part thereof which accrued after the 27th day of September, 1867; for that the said plaintiff did, on that day, by deed under his hand and seal, convey all his right, title, and interest in and to said land to R. H. Vance.

And said defendant, R. Shuburn, further answering said amended complaint, alleges:

65 That the cause of action stated in said amended complaint against him for damages, rents, and profits of said land, did not accrue to the plaintiff within three years next before the commencement of this action; and said cause of action is barred by section 17 of an act of the legislature of said State, passed April 22nd, 1850, entitled "An act defining the time for commencing civil actions;" and also by section 338, of the code of civil procedure of this State.

And said defendant, R. Shuburn, further answering said amended complaint, avers that all causes of action for rents, issues, and profits, and all causes of action for damages mentioned in said amended complaint which accrued more than three years before the filing of said amended complaint, are barred by subdivision two, of section 338, of the code of civil procedure of said State.

Wherefore this defendent prays:

1st. That this defendant have verdict, decision, findings, and judgment separate from the other defendants.

66 2d. That the plaintiff take nothing by his action.

3d. That the defendant have judgment for his costs.

4th. That he have such and other relief as he may show himself entitled to at the trial.

J. W. ARMSTRONG AND
J. H. McKUNE,
Attorneys for defendant, R. Shuburn.

(Endorsed:) Filed 14th March, 1877. L. S. B. Sawyer, clerk, by J. F. O'Bierne, d'p'y cl'k.

67 *Answer of Leonard Hoyt.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET ALS., DEFENDANTS.

The defendant Leonard Hoyt, answer' the amended complaint filed herein on the 8th day of February, 1877, and denies each and every allegation in said amended complaint contained.

And the defendant Leonard Hoyt, further answering said amended complaint, alleges:

I. That on the 23d day of October, 1865, a judgment was duly made, given, and entered of record in the district court of the 6th judicial district, in and for the county of Sacramento, and State of California, in favor of the people of the State of California, as plaintiff, against one

68 R. H. Vance et als., and the land described in said amended complaint, as defendants, for the sum of one hundred and thirteen 75-100 dollars in gold and silver coin, for delinquent taxes of said county and State levied for the year 1864, and costs of suit, taxed at thirty-seven 65-100 dollars, and accruing costs; and said judgment so made and entered in said district court directed and decreed that said land be sold, or so much thereof as would be necessary to pay said judgment and all costs.

II. That a certified copy of said judgment was duly made and issued out of the clerk's office of said district court to, and received by, the sheriff of the said county of Sacramento, James McClatchy, on the 23d

day of November, 1865, by which said sheriff was directed and commanded to sell said land, or so much thereof as should be necessary to satisfy said judgment and costs.

III. That after the receipt of said certified copy of said judgment
69 and before the return day thereof, said sheriff did give due and legal notice of the time and place of sale, according to the statute in such case made and provided, and in pursuance of such notice said sheriff did on the 18th of December, 1865, at the time and place in said notice named, sell at public auction the land aforesaid to L. M. Lincoln, one of the defendants, for the sum of one hundred and seventy-five 42-100 dollars in the coin aforesaid, being the amount of said judgment and costs, and that being the smallest quantity or portion of said land which any person offered to take and pay the said judgment and costs.

IV. That afterwards and since the commencement of this action the said sheriff, James McClatchy, by virtue of said judgment, said certified copy thereof, and the statute in such case made and provided, and in pursuance of said sale and in consideration of the sum of one hundred and seventy-five 42-100 dollars paid by said L. M. Lincoln in the
70 coin aforesaid to said sheriff, at the time of said sale, in accordance with his bill for said land, said sheriff did under his hand and seal convey to the said L. M. Lincoln, one of the defendants herein, said land, and said L. M. Lincoln is now the owner thereof, and entitle to the possession of the same, and his title thereto dates by relation from the date of the sale above mentioned.

And the defendant, Leonard Hoyt, further answering said amended complaint, alleges:

I. That since the commencement of this action, on or about the 27th day of September, 1867, the plaintiff, Ira G. French, by deed under his hand and seal, conveyed all his right, title, and interest in and to said land, to R. H. Vance, and said plaintiff did then assign and transfer the several causes of action set forth in said amended complaint to said Vance.

II. That said R. H. Vance, on or about the 17th day of February,
71 1871, by deed under his hand and seal, conveyed all his right, title, and interest in and to said land to John Reynolds, and said Vance did then and there assign and transfer the several causes of action set forth in said amended complaint to said John Reynolds, who thereby became and is the real party in interest in this action, and there has been no order or decree of this court allowing this action to be continued in the name of said plaintiff for the benefit of said John Reynolds; and said John Reynolds is and for more than fifteen years last past has been a citizen and resident of the State of California; and the said defendant, Leonard Hoyt, and all the other defendants herein, are and have been for more than fifteen years citizens and residents of this State; and by reason of the several premises set forth in this defence said plaintiff should not further prosecute this action in this court.

And the defendant, Leonard Hoyt, further answering said amended complaint, alleges:

I. That since this action was commenced, to wit, on or about
72 the 27th day of September, 1869, said Ira G. French, said plaintiff, by his deed under his hand and seal, conveyed all his right, title, and interest in and to said land to R. H. Vance, who thereby acquired all the title which the said plaintiff had to said land at the time this action was commenced; and said Vance thereafter, to wit, on or about the 4th day of December, 1867, commenced his action in the district court of the 6th judicial district in and for the county of Sacra-

mento and State of California against the defendant, Leonard Hoyt, and the other defendants herein, to recover the possession of said land upon the title so acquired thereto from said plaintiff; and in his complaint in said action said Vance alleged that he was the owner of said land, in fee simple, on the 27th day of September, 1867, and that he was still the owner thereof, in fee simple, at the time of the commencement of said action, and that defendants where in possession of the same; and said defendant, Leonard Hoyt, and the other defendants herein, made
73 and filed their answer to said complaint in said action; and in said answer they admitted that they were in possession of said land at the time of the commencement of said action, but they, and each of them, denied by their said answer that said Vance was the owner of said land at the time stated in his said complaint, or at any other time, and they therein claimed and averred that they were the owners at the several times stated in the complaint of said Vance, and entitled to the possession of the same; and the defendant, Leonard Hoyt, says that the title now declared upon in said amended complaint is the same title to said land conveyed by said plaintiff to said Vance, as aforesaid; and the same title was in issue in said action and was therein tried and determined by the judgment of said district court in favor of the defendant, Leonard Hoyt, and the other defendants, against said Vance, and said judgment still remains in full force and effect.

74 II. That John Reynolds was the attorney for said Vance in said action, and, as such attorney, had notice of the judgment rendered therein, and having such notice, on or about the 17th day of February, 1871, he took a conveyance from said Vance of all his right, title, and interest in and to said land, and he, said John Reynolds, has no other title to said land than the title so acquired from said Vance, and is bound by said judgment.

And the defendant, Leonard Hoyt, further answering said amended complaint, alleges:

I. That said plaintiff should not have or recover from the defendant, Leonard Hoyt, any damages, rents, issues, or profits for said land, or any part thereof, which accrued after the 27th day of September, 1867, for that the said plaintiff did on that day, by deed under his hand and seal, convey all his right, title, and interest in and to said land to R. H. Vance.

And said defendant, Leonard Hoyt, further answering said amended complaint, alleges:

75 That the cause of action stated in said amended complaint against him for damages, rents, and profits of said land did not accrue to the plaintiff within three years next before the commencement of this action; and said cause of action is barred by section 17 of an act of the legislature of said State passed April 22nd, 1850, entitled "An act defining the time for commencing civil actions"; and also by section 338 of the Code of Civil Procedure of this State.

And said defendant, Leonard Hoyt, further answering said amended complaint, avers that all causes of action for rents, issues, and profits, and all causes of action for damages mentioned in said amended complaint, which accrued more than three years before the filing of said amended complaint are barred by subdivision two of section 338 of the Code of Civil Procedure of said State.

Wherefore this defendant prays:

76 I. That this defendant have verdict, decision, findings and judgment separate from the other defendants.

II. That the plaintiff take nothing by his action.

III. That the defendant have judgment for his costs.

IIII. That he have such and other relief as he may show himself entitled to at the trial.

J. H. McKUNE,
J. W. ARMSTRONG,
Attorneys for Defendant Leonard Hoyt.

(Endorsed:) Filed 14th M'ch, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'py cl'k.

77 *Answer of W. W. Crouse.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET ALS., DEFENDANTS.

The defendant, W. W. Crouse, answers the amended complaint of the plaintiff filed herein on the 8th day of February, 1877, and denies each and every allegation in said amended complaint contained.

And the defendant, W. W. Crouse, further answering said amended complaint, alleges:

I. That on the 23d day of October, 1865, a judgment was duly made, given, and entered of record in the district court of the 6th judicial district in and for the county of Sacramento and State of California, in favor of the people of the State of California as plaintiff, against one R. H. Vance et als. and the land described in said amended complaint as defendants', for the sum of one hundred and thirteen 75-100
78 dollars in gold and silver coin for delinquent taxes of said county and State levied for the year 1864, and costs of suit taxed at thirty-seven 65-100 dollars and accruing costs, and said judgment so made and entered in said district court directed and decreed that said land be sold, or so much thereof as would be necessary to pay said judgment and all costs.

II. That a certified copy of said judgment was duly made and issued out of the clerk's office of said district court to and received by the sheriff of the said county of Sacramento, James McClatchy, on the 23d day of November, 1865, by which said sheriff was directed and commanded to sell said land, or so much thereof as should be necessary to satisfy said judgment and costs.

III. That after the receipt of said certified copy of said judgment, and before the return day thereof, said sheriff did give due and legal notice of the time and place of sale according to the statute in
79 such case made and provided, and in pursuance of such notice said sheriff did, on the 18th of December, 1865, at the time and place in said notice named, sell at public auction the land aforesaid to L. M. Lincoln, one of the defendants, for the sum of one hundred and seventy-five 42-100 dollars in the coin aforesaid, being the amount of said judgment and costs, and that being the smallest quantity or portion of said land which any person offered to take and pay the said judgment and costs.

IV. That afterwards, and since the commencement of this action, the said sheriff, James McClatchy, by virtue of said judgment, said certified copy thereof, and the statute in such case made and provided, and in pursuance of said sale, and in consideration of the sum of one hundred and seventy-five $\frac{42}{100}$ dollars paid by said L. M. Lincoln in the

coin aforesaid to said sheriff at the time of said sale, in accordance with his bill for said land, said sheriff did under his hand and seal convey to the said L. M. Lincoln, one of the defendants herein, said
80 land, and said L. M. Lincoln is now the owner thereof, and entitle' to the possession of the same, and his title thereto dates by relation from the date of the sale above mentioned.

And the defendant, W. W. Crouse, further answering said amended complaint, alleges:

I. That since the commencement of this action, on or about the 27th day of September, 1867, the plaintiff, Ira G. French, by deed under his hand and seal, conveyed all his right, title, and interest in and to said land to R. H. Vance, and said plaintiff did then assign and transfer the several causes of action set forth in said amended complaint to said Vance.

II. That said R. H. Vance, on or about the 17th day of February, 1871, by deed under his hand and seal, conveyed all his right, title, and interest in and to said land to John Reynolds, and said Vance did then and there assign and transfer the severals causes of action set
81 forth in said amended complaint to said John Reynolds, who thereby became and is the real party in interest in this action, and there has been no order or decree of this court allowing this action to be continued in the name of said plaintiff for the benefit of said John Reynolds; and said John Reynolds is, and for more than fifteen years last past has been, a citizen and resident of the State of California; and the said defendant, W. W. Crouse, and all the other defendants herein, are and have been for more than fifteen years citizens and residents of this State; and by reason of the several premises set forth in this defense said plaintiff should not further prosecute this action in this court.

And the defendant, W. W. Crouse, further answering said amended complaint, alleges:

I. That since this action was commenced, to wit, on or about the 27th day of September, 1869, said Ira G. French, said plaintiff, by
82 his deed under his hand and seal, conveyed all his right, title, and interest in and to said land to R. H. Vance, who thereby acquired all the title which the said plaintiff had to said land at the time this action was commenced, and said Vance thereafter, to wit, on or about the 4th day of December, 1867, commenced his action in the district court of the 6th judicial district in and for the county of Sacramento and State of California, against the defendant, W. W. Crouse, and the other defendants herein to recover the possession of said land upon the title so acquired thereto from said plaintiff, and in his complaint in said action said Vance alleged that he was the owner of said land in fee simple on the 27th day of September, 1867, and that he was still the owner thereof in fee simple at the time of the commencement of said action, and that defendants were in possession of the same, and said defendant W. W. Crouse and the other defendants herein made and filed their answers to said complaint in said action, and in said answers they admitted
83 that they were in possession of said land at the time of the commencement of said action, but they and each of them denied by their said answer that said Vance was the owner of said land at the time stated in his said complaint or at any other time, and they therein claimed and averred that they were the owners at the several times stated in the complaint of said Vance, and entitled to the possession of the same, and the defendant W. W. Crouse says that the title now declared upon in said amended complaint is the same title to said land conveyed by said plaintiff to said Vance as aforesaid; and the same

title was in issue in said action and was therein tried and determined by the judgment of said district court in favor of the defendant W. W. Crouse and the other defendants against said Vance, and said judgment still remains in full force and effect.

84 II. That John Reynolds was the attorney for said Vance in said action and as such attorney had notice of the judgment rendered therein, and having such notice on or about the 17th day of February, 1871, he took a conveyance from said Vance of all his right, title, and interest in and to said land, and he, said John Reynolds, has no other title to said land than the title so acquired from said Vance, and is bound by said judgment.

And the defendant W. W. Crause, further answering said amended complaint, alleges:

I. That said plaintiff should not have or recover from the defendant W. W. Crause any damages, rents, issues, or profits for said land or any part thereof which accrued after the 27th day of September, 1867, for that the said plaintiff did, on that day, by deed, under his hand and seal convey all his right, title, and interest in and to said land to R. H. Vance.

And said defendant W. W. Crouse, further answering said amended complaint, alleges:

85 That the cause of action stated in said amended complaint against him for damages, rents, and profits of said land did not accrue to the plaintiff within three years next before the commencement of this action, and said cause of action is barred by section 17 of an act of the legislature of said State passed April 22nd, 1850, entitled "An act defining the time for commencing civil actions," and also by section 338 of the code of civil procedure of this State.

And said defendant W. W. Crouse, further answering said amended complaint, avers that all causes of action for rents, issues, and profits, and all causes of action for damages mentioned in said amended complaint which accrued more than three years before the filing of said amended complaint, are barred by subdivision two of section 338 of the code of civil procedure of said State.

Wherefore this defendants prays:

I. That this defendant have verdict, decision, findings, and judgment separate from the other defendants.

II. That the plaintiff take nothing by his action.

86 III. That the defendant have judgment for his costs.

IV. That he have such and other relief as he may show himself entitled to at the trial.

J. W. ARMSTRONG &
J. H. McKUNE,
Attorneys for Defendant W. W. Crouse.

(Endorsed:) Filed 14th March, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

87 *Answer of Thos. Edwards.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET ALS., DEFENDANTS.

The defendant, Thomas Edwards, answers the amended complaint of the plaintiff filed herein on the 8th day of February, 1877, and denies each and every allegation in said amended complaint contained.

And the defendant, Thomas Edwards, further answering said amended complaint, alleges:

I. That on the 23rd day of October, 1865, a judgment was duly made, given, and entered of record in the district court of the 6th judicial district, in and for the county of Sacramento and State of California, in favor of the people of the State of California, as plaintiff, against R. H. Vance et als., and the land described in said one amended complaint, as defendants, for the sum of one hundred and thirteen $\frac{75}{100}$ dollars in gold and silver coin, for delinquent taxes of said county and State, levied for the year 1864, and costs of suit taxed at thirty-seven $\frac{65}{100}$ dollars and accruing costs; and said judgment so made and entered in said district court directed and decreed that said land be sold, or so much thereof as would be necessary to pay said judgment and all costs.

88

II. That a certified copy of said judgment was duly made and issued out of the clerk's office of said district court to and received by the sheriff of said county of Sacramento, James McClatchy, on the 23rd day of November, 1865, by which said sheriff was directed and commanded to sell said land, or so much thereof as should be necessary to satisfy said judgment and costs.

III. That after the receipt of said certified copy of said judgment, and before the return day thereof, said sheriff did give due and legal notice of the time and place of sale, according to the statute in such case made and provided; and in pursuance of such notice, said sheriff did, on the 18th day of December, 1865, at the time and place in said notice named, sell, at public auction, the land aforesaid to L. M. Lincoln, one of the defendants, for the sum of one hundred and seventy-five $\frac{42}{100}$, in the coin aforesaid, being the amount of said judgment and costs, and that being the smallest quantity or portion of said land which any person offered to take and pay said judgment and costs.

89

IV. That afterwards, and since the commencement of this action, the said sheriff James McClatchy, by virtue of said judgment, said certified copy thereof and the statute in such case made and provided, and in pursuance of said sale and in consideration of the sum of one hundred and seventy-five $\frac{42}{100}$ dollars, paid by said L. M. Lincoln in the coin aforesaid to said sheriff at the time of said sale in accordance with his bill for said land, said sheriff did, under his hand and seal, convey to the said L. M. Lincoln, one of the defendants herein, said land, and said L. M. Lincoln is now the owner thereof and entitled to possession of the same, and his title thereto dates by relation from the date of the sale above mentioned.

90

And the said defendant, Thomas Edwards, further answering said amended complaint, alleges:

I. That since the commencement of this action, on or about the 27th day of September, 1867, the plaintiff, Ira G. French, by deed under his hand and seal, conveyed all his right, title, and interest in and to said land to R. H. Vance, and said plaintiff did then assign and transfer the several causes of action set forth in said amended complaint to said Vance.

II. That said R. H. Vance on or about the 17th day of February, 1871, by deed under his hand and seal, conveyed all his right, title, and interest in and to said land to John Reynolds; and said Vance did then and there assign and transfer the several causes of action set forth in said amended complaint to said John Reynolds, who thereby became and is the real party in interest in this ac-

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tion, and there has been no order or decree of this court allowing this action to be continued in the name of said plaintiff for the benefit of said John Reynolds; and said John Reynolds is and for more than fifteen years past has been a citizen and resident of the State of California; and the said defendant, Thomas Edwards, and all the other defendants herein are, and have been for more more than fifteen years, citizens and residents of this State; and by reason of the several premises set forth in this defense said plaintiff should not further present this action in this court.

And the defendant, Thomas Edwards, further answering said amended complaint, alleges:

I. That since this action was commenced, to wit, on or about the
92 27th day of September, 1867, said Ira G. French, said plaintiff, by his deed under his hand and seal, conveyed all his right, title, and interest in and to said land to R. H. Vance, who thereby acquired all the title which the said plaintiff had to said land at the time this action was commenced; and said Vance thereafter, to wit, on or about the 17th day of December, 1867, commenced his action in the district court of the 6th judicial district in and for the county of Sacramento, and State of California, against the defendant, Thomas Edwards, and the other defendants herein, to recover the possession of said land upon the title so acquired thereto from said plaintiff; and in his complaint in said action said Vance alleged that he was the owner of said land in fee simple on the 27th day of September, 1867, and that he was still the owner thereof in fee simple at the time of the commencement of said action, and that the defendants were in the possession of the same; and
93 said defendants, Thomas Edwards and the other defendants herein, made and filed their answer to said complaint in said action, and in said answer they admitted that they were in possession of said land at the time of the commencement of said action; but they, and each of them, denied by their said answers that said Vance was the owner of said land at the time stated in his said complaint or at any other time, and they therein claimed and averred that they were the owners thereof at the several times stated in the complaint of said Vance, and entitled to the possession of the same; and the defendant Thomas Edwards says that the title was declared upon in said amended complaint is the same title to said land conveyed by said plaintiff to said Vance as aforesaid; and the same title to said land was in issue in said action, and was therein tried and determined by the judgment of said district court in favor of the defendant, Thomas Edwards, and the other defendants, against said Vance, and said judgment still remains in full force and effect.

94 II. That John Reynolds was the attorney for said Vance in said action, and as such attorney had notice of the judgment rendered therein, and having sent notice, on or about the 17th day of February, 1871, he took a conveyance from said Vance of all his right, title, and interest in and to said land, and he, said John Reynolds, has no other title to said land than the title so acquired from said Vance, and is bound by said judgment.

And the defendant, Thomas Edwards, further answering said amended complaint, alleges:

I. That said plaintiff should not have or recover from the defendant Thomas Edwards any damages, rents, issues, or profits for said land or any part thereof which accrued after the 27th day of September, 1867, for that the said plaintiff did, on that day by deed under his hand and

seal, convey all his right, title, and interest in and to said land to R. H. Vance.

95 And said defendant Thomas Edwards further answering said amended complaint alleges that the cause of action stated in said amended complaint against him for damages, rents, and profits of said land did not accrue to the plaintiff within three years next before the commencement of this action, and said cause of action is barred by section 17 of an act of the legislature of said State passed April 22nd, 1850, entitled an act defining the time for commencing civil actions, and also by section 338 of the code of civil procedure of this State.

And said defendant Thomas Edwards further answering said amended complaint avers that all causes of action for rents, issues, and profits and all causes of action for damages mentioned in said amended complaint which accrued more than three years before the filing of said amended complaint are barred by subdivision two of section 338, of the code of civil procedure of said State.

96 Wherefore this defendant prays:

1st. That this defendant have verdict, decision, findings, and judgment separate from the other defendants.

2nd. That the plaintiff take nothing by his action.

3rd. That the defendant have judgment for his costs.

4th. That he have such and other relief as he may show himself entitled to at the trial.

JOHN H. McKUNE &
JOHN W. ARMSTRONG,
Att'y for Def't Thomas Reynolds.

(Endorsed:) Filed M'ch 14th, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

97 *Answer of Antone De Silva, ral.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH,
vs.
THOMAS EDWARDS ET ALS.

The defendants Antone De Silva, Samuel Onesta, and Samuel O'Ness answer the amended complaint filed herein and deny each and every allegation in said amended complaint contained.

And the defendants Antone De Silva, Samuel Onesta, and Samuel O'Ness further answering said amended complaint alleges:

I. That on the 23 day of October, 1865, a judgment was duly made, given, and entered of record in the district court of the 6th judicial district in and for the county of Sacramento, and State of California, in favor of the people of the State of California as plaintiff, against one R. H. Vance et als., and the land described in said amended com-

98 plaint as defendants,' for the sum of one hundred and thirteen $\frac{75}{100}$ dollars in gold and silver coin for delinquent taxes of said county and State levied for the year 1864, and costs of suit taxed at thirty-seven $\frac{65}{100}$ dollars and accruing costs; and said judgment so made and entered in said district court directed and decreed that said land be sold or so much thereof as would be necessary to pay said judgment and all costs.

II. That a certified copy of said judgment was duly made and issued out of the clerk's office of said district court to and received by the

sheriff of said county of Sacramento, James McClatchy, on the 23rd day of November, 1865, by which said sheriff was directed and commanded to sell said land or so much thereof as should be necessary to satisfy said judgment and costs.

3. That after the receipt of said certified copy of said judgment and before the return day thereof, said sheriff did give due and legal
99 notice of the time and place of sale according to the statute in such case made and provided, and in pursuance of said notice said sheriff did on the 18th day of December, 1865, at the time and place in said notice named sell at public auction the land aforesaid to the defendant L. M. Lincoln for the sum of one hundred and seventy-five $\frac{43}{100}$ dollars, the amount of said judgment and all costs, that being the smallest quantity or portion of said land which any person offered to take and pay said judgment and costs.

4. That afterwards and since the commencement of this action the said sheriff, James McClatchy, by virtue of said judgment, the said certified copy thereof, and the statute in such case made and provided, and in pursuance of sale and in consideration of the sum of one hundred and seventy five $\frac{43}{100}$ dollars paid by the defendant, L. M. Lincoln, to said sheriff at the time of said sale, in accordance with his bid,
100 said sheriff did on the 11 day of June, 1872, by deed, under his hand and seal, convey to said L. M. Lincoln said lands to recover which this action was brought; and said defendant is now the owner thereof, and his title dates by relation at the time of said sale.

And the defendants, Antone De Silva, Samuel Onesta, and Samuel O'Ness, further answering said amended complaint, alleges:

1. That since the commencement of this action, to wit, on or about the 27th day of September, 1867, the plaintiff, Ira G. French, by deed, under his hand and seal, conveyed all his right, title, and interest in and to said land to R. H. Vance; and said plaintiff did at the same time assign and transfer the several causes of action set forth in said amended complaint to said Vance.

II. That said R. H. Vance, on or about the 17th day of February, 1871, by his deed under his hand and seal, conveyed all his right,
101 title, and interest in and to said land John Reynolds; and said Vance did then and there assign and transfer the several causes of action set forth in said amended complaint to said John Reynolds, who thereby became and is the real party in interest in this action, and there has been no order or decree of this court allowing this action to be continued in the name of said plaintiff for the benefit of said John Reynolds; and said John Reynolds is now and for more than fifteen years has been a citizen and resident of the State of California, and the said defendants, Antone De Silva, Samuel Onesta, and Samuel O'Ness, and all the other defendants herein, are and for more than fifteen years have been citizens and residents of said State; and by reason of the several premises set forth in this defense said plaintiff should not further prosecute this action in this court.

And the defendants, Antone De Silva, Samuel Onesta, and
102 Samuel O'Ness, further answering said amended complaint, alleges:

I. That since this action was commenced, to wit, on or about the 27 day of September, 1867, said Ira G. French, the said plaintiff, by his deed under his hand and seal conveyed all his right, title, and interest in and to said land to R. H. Vance, who thereby acquired all the title of said plaintiff had to said land at the time this action was commenced, and said Vance thereafter, to wit, on or about the 4 day of December,

1867, commenced his action in said district court of the 6th judicial district in and for the county of Sacramento, and State of California, against said defendants, Antone De Silva, Samuel O'Nesta, and Samuel O'Ness, and the other defendants herein, to recover the possession of said land upon the title so acquired thereto from said plaintiff; and in his complaint in said action said Vance alleged that he was the owner of said land in fee simple on the 27th day of September,
103 1867, and that he was still the owner thereof in fee simple at the time of the commencement of said action, and that the defendants were in the possession of the same; and said defendants, Antone De Silva, Samuel O'Ness, and Samuel Onesta, and the other def'ts herein, made and filed their answer to said complaint in said action, and in said answer they admitted that they were in possession of said land at the time of the commencement of said action, but they and each of them denied, by their said answer, that said Vance was the owner of said land at the time stated in his said complaint, or at any other time, and they therein claimed and averred that they were the owners thereof, at the several times stated in the complaint of said Vance, and entitled to the possession thereof; and the def'ts, Antone De Silva, Samuel Onesta, and Samuel O'Ness, say that the title now declared upon in said amended complaint is the same title to said land conveyed by said plaintiff to said Vance, as aforesaid, and the same title
104 to said land was in issue in said action and therein tried and determined by the judgment of said district court in favor of the def'ts, Antone De Silva, Samuel Onesta, and Samuel O'Ness, and the other defendants, against said Vance, and said judgment still remains in full force and effect.

II. That John Reynolds was the attorney for said Vance in said action, and, as such attorney, had notice of the judgment rendered therein, and having such notice, on or about the 17th day of February, 1871, he took a conveyance from said Vance of all his right, title, and interest in and to said land, and he, said John Reynolds, has no other title to said lands than the title so acquired from said Vance, and he is bound by said judgment.

And said def'ts, Antone De Silva, Samuel O'Ness, and Samuel Onesta, further answering said amended complaint, allege:

I. That said plaintiff should not have, or recover from the de-
105 fendants, Antone De Silva, Samuel O'Ness, and Samuel Onesta, any damages, rents, issues, or profits for said land, or any part thereof which accrued after the 27th day of September, 1867, for that the said plaintiff did, on that day, by deed under his hand and seal, convey all his right, title, and interest in and to said land to said R H. Vance.

And said def'ts, Antone De Silva, Samuel O'Ness, and Samuel Onesta, further answering said amended complaint, allege that the causes of action stated in said amended complaint against them for damages, rents, and profits of said land did not accrue to the plaintiff within three years next before the commencement of this action, and said cause of action is barred by section 17th of the act of the legislature of said State passed April 22nd, 1850, entitled "An act defining the time for commencing of civil actions; and also by section 338 of the code of civil procedure of said State.

And said defendants, Antone De Silva, Samuel O'Ness, & Sam-
106 uel Onesta, further answering said amended complaint, aver that all causes of action for damages, rents, issues, and profits mentioned in said amended complaint which accrued more than three years

before the filing of said amended complaint are barred by subdivision two of said section 338 of said code of civil procedure of said State.

Wherefooe these defendants pray—

1st. That these defendants have verdict, decision, findings, and judgment separate from the other defendants.

2nd. That plaintiff take nothing by this action.

3. That defendants have judgment for their costs.

4. That they have such other and further relief as they show themselves entitled to at the trial.

JOHN H. McKUNE AND
JOHN W. ARMSTRONG,
Atty's for defendants Antone De Silva, Samuel O'Ness, and Samuel Onesta.

(Endorsed:) Filed 14 March, 1877. L. S. B. Sawyer, clerk.

107 *Answer of Jefferson Lake.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET ALS., DEFENDANTS.

The defendant, Jefferson Lake, answers the amended complaint, filed herein, and denies each and every allegation in said amended complaint contained.

And the defendant, Jefferson Lake, further answering said amended complaint, alleges—

I. That on the 23rd day of October, 1865, a judgment was duly made, given, and entered of record in the district court of the 6th judicial district in and for the county of Sacramento, and State of California, in favor of the People of the State of California, as plaintiff, against one R. H. Vance et als., and the land described in said amended com-
108 plaint, as defendants, for the sum of one hundred and thirteen $\frac{75}{100}$ dollars in gold and silver coin for delinquent taxes of said county and State levied for the year 1864, and costs of suit taxed at thirty-seven $\frac{65}{100}$ dollars and accruing costs; and said judgment so made and entered in said district court directed and decreed that said land be sold, or so much thereof as would be necessary to pay said judgment and all costs.

II. That a certified copy of said judgment was duly made and issued out of the clerk's office of said district court to and received by the sheriff of the said county of Sacramento, James McClatchey, on the 23rd day of November, 1865, by which said sheriff was directed and commanded to sell said land, or so much thereof as should be necessary to satisfy said judgment and costs.

III. That after the receipt of said certified copy of said judgment
109 and before the return day thereof, said sheriff did give due and legal notice of the time and place of sale according to the statute in such cases made and provided, and in pursuance of such notice, said sheriff did, on the 18th day of December, 1865, at the time and place in said notice named sell at public auction the land aforesaid to the defendant, L. M. Lincoln, for the sum of one hundred and seventy-five $\frac{43}{100}$ dollars, the amount of said judgment and all costs, that being the smallest quantity or portion of said land which any person offered to take and pay said judgment and costs.

IV. That afterwards and since the commencement of this action the said sheriff, James McClatchey, by virtue of said judgment, the said certified copy thereof, and the statute in such case made and provided, and in pursuance of said sale, and in consideration of the sum of one hundred and seventy-five $\frac{42}{100}$ dollars, paid by the defendant, L. M. Lincoln to said sheriff at the time of said sale in accordance
110 with his bid, said sheriff did, on the 11th day of June, 1872, by deed under his hand and seal, convey to said L. M. Lincoln said land, to recover which this action was brought, and said defendant, Lincoln, is now the owner thereof, and his title dates by relation at the time of said sale.

And this defendant, Jefferson Lake, further answering said amended complaint, alleges,

I. That since the commencement of this action, to wit, on or about the 27th day of September, 1867, the plaintiff, Ira G. French, by deed under his hand and seal, conveyed all his right, title and interest in and to said land to R. H. Vance; and said plaintiff did at the same time assign and transfer the several causes of action set forth in said amended complaint to said Vance.

II. That said R. H. Vance, on or about the 17th day of February, 1871, by his deed under his hand and seal, conveyed all his right,
111 title and interest in and to said land to John Reynolds; and said Vance did then and there assign and transfer the several causes of action set forth in said amended complaint to said John Reynolds, who thereby became and is the real party in interest in this action, and there has been no order or decree of this court allowing this action to be continued in the name of said plaintiff for the benefit of said John Reynolds; and said John Reynolds is, and for more than fifteen years has been, a citizen and resident of the State of California, and the said defendant, Jefferson Lake, and all the other defendants herein, are and for more than fifteen years have been, citizens and residents of said State; and by reason of the several premises set forth in this defense, said plaintiff should not further prosecute this action in this court.

And the defendant, Jefferson Lake, further answering said amended complaint, alleges,

112 I. That since this action was commenced, to wit, on or about the 27th day of September, 1867, said Ira G. French, the said plaintiff, by his deed under his hand and seal conveyed all his right, title, and interest in and to said land to R. H. Vance, who thereby acquired all the title said plaintiff had to said land at the time this action was commenced, and said Vance thereafter, to wit, on or about the 4th day of December, 1867, commenced his action in said district court of the 6th judicial district in and for the county of Sacramento and State of California, against said defendant, Jefferson Lake, and the other defendants herein, to recover the possession of said land upon the title so acquired thereto from said plaintiff, and in his complaint in said action said Vance alleged that he was the owner of said land in fee simple on the 27th day of September, 1867, and that he was still the owner thereof in fee simple at the time of the commencement of said action, and
113 that the defendants were in the possession of the same; and said defendant, Jefferson Lake, and the other defendants herein, made and filed their answer to said complaint in said action, and in said answer they admitted that they were in possession of said land at the time of the commencement of said action, but they and each of them denied by their said answer that said Vance was the owner of said land at the time stated in his said complaint or at any other time, and they

therein claimed and averred that they were the owners thereof at the several times stated in the complaint of said Vance and entitled to the possession thereof; and the defendant Jefferson Lake says that the title now declared upon in said amended complaint is the same title to said land conveyed by said plaintiff to said Vance as aforesaid, and the same title to said land was in issue in said action and was therein tried and determined by the judgment of said district court in favor of the defendant Jefferson Lake and the other defendants against
114 said Vance, and said judgment still remains in full force and effect.

II. That John Reynolds was the attorney for said Vance in said action, and as such attorney had notice of the judgment rendered therein, and having such notice on or about the 17th day of February, 1871, he took a conveyance from said Vance of all his right, title, and interest in and to said land, and he, said John Reynolds, has no other title to said land than the title so acquired from said Vance, and he is bound by said judgment.

And said defendant, Jefferson Lake, further answering said amended complaint, alleges,

I. That said plaintiff should not have or recover from the defendant Jefferson Lake any damages, rents, issues, or profits for said land or any part thereof which accrued after the 27th day of September, 1867,
115 for that the said plaintiff did on that day by deed under his hand and seal convey all his right, title, and interest in and to said land to said R. H. Vance.

And said defendant, Jefferson Lake, further answering said amended complaint, alleges that the cause of action stated in said amended complaint against him for damages, rents, and profits of said land, did not accrue to the plaintiff within three years next before the commencement of this action, and said cause of action is barred by section 17 of the act of the legislature of said State, passed April 22, 1850, entitled "An act defining the time for commencing of civil actions," and also by section 338 of the Code of Civil Procedure of said State.

And said defendant, Jefferson Lake, further answering said amended complaint, avers that all causes of action for damages, rents, is-
116 sues, and profits mentioned in said amended complaint which accrued more than three years before the filing of said amended complaint, are barred by subdivision two of said section 338 of said Code of Civil Procedure of said State.

Wherefore this defendant prays—

1st. That this defendant have verdict, decision, findings, and judgment separate from the other defendants.

2nd. That plaintiff take nothing by this action.

3rd. That defendant have judgment for his costs.

4th. That he have such other and further relief as he may show himself entitled to at the trial.

JOHN H. McKUNE
And JOHN W. ARMSTRONG,
Att'y's for Def't Jefferson Lake.

(Endorsed:) Filed 14th March, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

117 *Order substituting Sarah W. Edwards, adm'r'x, as def't, &c.*

At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San

Francisco, on Monday, the 20th day of August, in the year of our Lord one thousand eight hundred and seven-seven,

Present, the honorable Lorenzo Sawyer, circuit judge.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

On suggestion of the death of the defendant, Thomas Edwards, since the filing of his amended answer, and Sarah W. Edwards having been appointed administratrix of his estate, it is ordered that Sarah W. Edwards, the administratrix of the estate of Thomas Edwards, deceased, be, and she is hereby, substituted as party-defendant in this action in the place and stead of said defendant, Thomas Edwards; and
118 that the clerk issue a summons to said defendant, Sarah W. Edwards, administratrix, and that she have ten days after service of said summons to enter her appearance therein; and that the complaint be amended by inserting the name of Sarah W. Edwards, administratrix of the estate of Thomas Edwards, deceased, without engrossment.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled action.

Attest my hand and seal of said circuit court this 7th day of October, A. D. 1878.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

Amend't to complaint.

United States circuit court, district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET AL., DEFENDANTS.

And now comes the plaintiff, and by leave of the court first had and obtained, files the following amendment to his amended complaint herein:

Amend said complaint by inserting the name of "Sarah W. Edwards, administratrix of the estate of Thomas Edwards, deceased," in place of the name "Thomas Edwards," wherever the same occurs.

JOHN REYNOLDS,
Pl'ff's Att'y.

(Endorsed:) Filed Sept. 4th, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. c'lk.

120 *Opinion.*

United States circuit court, ninth circuit, district of California.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

1. *Confession of judgment.*—Under the statute of California of 1850 (Stat. 1850, 454, sec. 293), authorizing an entry of judgment upon con-

fession without action, the statement required must be signed by the party in person, and a judgment entered upon a statement signed by the defendant's attorney in the case is void.

2. *Same.*—Where the judgment under said act was entered upon a statement signed by two of the defendants in person, and by the attorney of the third, held: that the consent of those signing was only that judgment might be entered against all, and as there was no authority to enter judgment as to the third party, the judgment was unauthorized as void as to all.

3. *Sale under satisfied judgment void.*—Where an execution is
121 issued upon a judgment and returned satisfied, and the judgment creditor afterward assigns the judgment to one of the principal judgment debtors, a sale of the co-defendant's property upon a second execution, issued at the instance of the assignee of the judgment, is void.

4. *Judgment—Estoppel.*—French sued Edwards to recover land, and there was a trial and judgment for defendant. Afterward French conveyed the land to Vance, who sued Edwards to recover the same land. Edwards set up as a defense, by way of estoppel, the prior judgment against French, and subsequent conveyance to Vance, and the court found the matter of estoppel, and gave judgment for defendant solely on that ground. Afterward, said first judgment in French vs. Edwards was reversed on writ of error, and the cause remanded for a new trial, whereupon French, having amended his complaint, Edwards, in his answer thereto, alleged a conveyance from Vance to Reynolds
122 with notice of Vance's judgment; that Reynolds is now prosecuting this action for his own benefit, and in turn set up, by way of estoppel, the said conveyance to Vance, and judgment in Vance vs. Edwards. Held, that the vacation of the judgment in French vs. Edwards, after the judgment in Vance vs. Edwards, which was based solely on the first judgment, removed the matter of estoppel, and that the judgment in Vance vs. Edwards constituted no defense to the action.

5. *Trust estate—Execution sale.*—A tract of land was conveyed to Vance, Sneath, and Melvin, "trustees of the Sutter Land Company," an unincorporated association of more than thirty persons, Vance and Sneath being members. A judgment for a debt of the association having been recovered in an action to which all the members individually, including Vance and Sneath, were parties defendant, all of whom appeared, an execution was issued thereon, and the said land sold. Held, that Vance and Sneath had an undivided interest in both the
123 legal and beneficial estate in the land, and that their interest at least passed by the sale.

6. *Recovery of entire land by co tenant.*—The holder of an undivided interest in land under the laws of California may recover the entire land, as against all parties, except his co-tenants.

7. *Amending return—Tax sale.*—Under a decree for taxes, the sheriff sold a large tract of land, and made a return that he sold to the "highest bidder," where the law required a sale of the smallest quantity that any party would take and pay the taxes and costs. Six months were allowed by law for redemption, at the expiration of which time the sheriff executed a deed, which recited a sale to the highest bidder. In an action by the grantee on the tax deed to recover the land, it having been held that the sale appeared upon the face of the return and deed to be void, the ex-sheriff, six years after the sale, by direction of the court,

124 amended his return showing a valid sale, and afterward executed a new deed corresponding with the amended return. Held: 1. That the original return was made in the regular course of the sheriff's duty, and was the proper and only record evidence of the mode of sale, and it should a void sale from which there was no necessity to redeem. 2. That the owner of the property was not bound to ascertain the mode of sale from any other source, and had a right to rely upon the truth of the record thus made. 3. That the ex sheriff could not years after the expiration of the time for redemption amend the return so as to show the sale to be valid, which before appeared upon the record to be void, and *and* thereby and by his reliance upon a false record cut the owner off from his right of redemption.

8. *Presumption—Trust.*—The presumption of a conveyance of lands conveyed in trust, after it becomes impossible to execute the trust, arising under the conditions of this case as stated in French vs. Edwards (21 Wal. 147), is a conclusive presumption.

125 SAWYER, circuit judge:

The plaintiff has title unless it has been cut off in some one of the several modes suggested by defendants. None of the defendants claim title except Lincoln, who claims through a sale and sheriff's deed under a judgment for taxes. He has no other title. If this fails, then he, as well as the other defendants, claims that the title is outstanding in *order* parties.

1. The Milliken title relied on by defendants is manifestly void. The judgment by confession entered in 1850, under which Milliken purchased at sheriff's sale, conceeding the proceeding to be in due form in other particulars, was not entered upon a statement made by the defendants as required by the statute (Stat. 1850, 454, sec. 293). The statute evidently contemplates a statement signed by the party in person against whom judgment is authorized to be entered without action. In this case one of the defendants did not sign the statement but it was signed
126 by a person purporting to sign as his attorney. Those who did sign consented to a judgment against all, not against themselves alone. This point has been decided by the supreme court of the State in a case arising under the same statute. (Chapin vs. Thompson, 20 Cal., 687–8.) But if valid, an execution was issued and returned satisfied. That satisfied the judgment. Some six months afterward, the plaintiff assigned the satisfied judgment to one of the principal defendants, who thereupon had another execution issued, and sold thereunder the interest of his co-defendant in the premises in controversy to Milliken. Such a sale under a satisfied judgment could not affect the title. It does not appear that the holders of the Milliken title themselves even claim any interest in the land.

2. As to the matter set up as res adjudicata.

The defendants in this case had judgment in 1867. Afterward
127 the plaintiff, French, conveyed to Vance, who brought suit to recover the premises against the same defendants. They set up as one defense, by way of estoppel, the said judgment recovered in this case in 1867, and the court held the plaintiff to be estopped by said judgment. Afterward French sued out a writ of error upon the said judgment in this case of 1867, and it was thereupon reversed at the December term, 1871. (13 Wal., 506.) The case having been remanded to this court for new trial numerous other proceedings were had, and the plaintiff having, in 1877, amended his complaint, the defendants in their answer thereto alleged that Vance, since the said judgment in Vance vs.

Edwards, had conveyed to Reynolds who took with notice of said judgment; that the action is now being prosecuted for the benefit of said Reynolds, and then set up in turn as one defense the said judgment in Vance against these defendants by way of estoppel against further litigation herein, which judgment rested solely on the former judgment
128 in this case which had in the meantime been reversed as stated; and this is the matter adjudged now relied on. The question on this point is precisely the same as when presented to this court on motion for leave to file a supplemental answer setting up the Vance judgment. I am entirely satisfied with the view I took on that motion, and content myself with referring to the decision then rendered reported in 4 Sawyer, 125.

3. As to the Martin and Lynch trust, I regard the decision in this case, reported in 21 Wal., 150, as indicating the opinion of the supreme court to be that the presumption arising upon the facts stated is an indisputable or conclusive presumption. It must have been evident to the court that there had in fact been no reconveyance, and the court would scarcely have sent the case back on that point under these circumstances, if it had not deemed the presumption conclusive. The presumption in this class of cases is either conclusive or useless; and if useless, it might as well not be indulged. The ends of justice in
129 such cases doubtless require the presumption, but if so, they require it to be indisputable. I shall therefore act upon that view. I have, however, at the request of the defendant, and upon testimony admitted against the objection and exception of the plaintiff, found the fact upon the evidence that no reconveyance was actually executed. It is a fact in the case, and the defendants are entitled to have it found in this special verdict, so that they may have the benefit of it, if I have misapprehended the views of the supreme court as to the character of the presumption arising in the case.

4. As to the Alleged Sutter Land Company Trust. The Sutter Land Company was an unincorporated company, consisting of more than thirty members. A conveyance to the larger portion of the premises in controversy had been made to Vance, Sneath, and Melvin, as trustees for the Sutter Land Company. In 1858, one Pettitt brought an action against the members of the Sutter Land Company for a debt due from the association, making all the members
130 individually parties, and all answered. Vance and Sneath were two of the trustees, and were also parties defendant to the suit as members of the company. A judgment was obtained, and a large portion of the property standing in the names of Vance, Sneath, and Melvin, sold under an execution issued upon the judgment. All the title acquired under these proceedings became vested in the plaintiff before the commencement of this suit. Two of the three parties vested with the legal title, Vance and Sneath, and all the beneficiaries were parties to the suit. There being no corporation, Vance and Sneath had undivided interests in both the legal and equitable title to the land which was sold as well as in the part unsold, and their interest, at least in the part soled, passed by the judgment and sale, and this is sufficient in this State to enable the successor to their interest to recover against all the world except their co-tenants. I think, also, under such a state of facts, the entire legal title which was vested in Vance and Sneath, and
131 the entire beneficial interest in the whole passed. Vance's interest, also, in the part not sold under the execution, passed to plaintiff by subsequent conveyances. The evidence shows that the enterprise of the Sutter Land Company was long since abandoned, and,

although Sneath and Melvin and the secretary of the company were examined as witnesses by defendants, it does not appear, nor am I aware, that any of the association now claim title for themselves, or that they ever have since the sale under said judgment, claimed any interest in said premises, and none of the defendants connect themselves with that title.

5. As to the tax title. After the reversal of the judgment by the decision reported in 13 Wallace, 506, on the ground that the tax-deed originally executed is void upon its face, the defendant, Lincoln, on June 11, 1872, more than six years after the sale and return, procured an ex parte order of the State district court, directing the ex-sheriff to
132 amend his return to the order of sale in the tax sale, so as to show that the sheriff sold the least quantity of land that any party would take and pay the taxes and costs, instead of showing a sale to the highest bidder, as the return was originally made; and the ex-sheriff thereupon amended his return in accordance with said order. On the same day he executed and delivered to Lincoln, another deed, in which he recited the facts, as stated in the amended return.

The defendants thereupon filed supplemental answer setting up the title thus acquired by defendant, Lincoln, through the corrected return and new deed, since the former trial. Plaintiff claims on the one hand, that when the sheriff made his return, executed and delivered his deed, in accordance therewith, and went out of office, his power was exhausted; and that even if he could amend his return by stating omitted acts, and make a new deed supplying corresponding defects, he could not amend by falsifying facts before returned, and make a new
133 deed, reciting facts inconsistent with his recitals in his first deed. On the other hand it is insisted that the return can be amended so as to correct errors in any particulars, and new deeds be correct in fact in their recitals at any distance of time, and many authorities are cited to sustain this view.

The current of authorities undoubtedly sustains the general proposition maintained by defendants where no new rights will be gained or lost by the amendment; but there are facts in this case that do not appear to have been considered in any of the cases brought to my attention by defendant's counsel. Under the statute of California affecting the question, the owner of real estate, sold under a judgment for taxes, had a right of redemption; but the time within which he was called upon to exercise it was extremely short, it being only six months. In this case, as in most others of the kind, the owner did not appear in the tax suit in any part of the case, and the whole proceedings, from beginning to the end, including the sale and making of the first return and deed, and the amendment of the return and execution
134 of the new deed, were without the presence of the owner. The return by the officer of his proceedings at the tax sale was made in the proper and ordinary course of his duty.

The act of 1851, concerning sheriffs, in force when the tax sale in question was made, provides that: "A sheriff to whom any process, writ, order, or paper shall be delivered, shall execute it with diligence," etc., "and shall return it without delay to the proper court or officer with his certificate indorsed thereon of the manner of its service or execution." (Stat. 1851, 191, Sec. 6.) The act of 1864, relating to sales under judgments for taxes, provides that a copy of the decree "duly certified by the clerk, shall authorize the sheriff to sell the property therein described," "and such copy, when executed and returned by the sheriff, shall be filed with the other papers as a part of the judgment

roll." (Stat. 1863–4, 400, Sec. 1. See also, practice act then in force, Sec. 212.)

Thus, it was a part of the official duty of the sheriff to make
135 a certificate, and indorse it on the process, of the manner of its execution; and the process in this case by express provision of the statute was a certified copy of the decree, which when returned with the certificate of the mode of execution was under the express provision of the statute to be "filed with the other papers as a part of the judgment roll." It was intended by the statute to become a part of the authentic public record of the proceedings for the information and security of all interested in them. This record was necessary not only for the purpose of informing the owner of the fact of sale, but of its terms, in order that he might know whether it was necessary to redeem under the law to preserve his property; and if so, what amount it would be necessary to pay to effect a redemption. This record, with the certificate of sale, are the authentic, official, and only means provided by law to furnish this information, and the facts stated in this record the owner of the land was entitled to rely upon as true. It may be, if the sheriff had omitted to make any return other than to
136 make the certificate of sale, and in due time the deed, that the want of a return would not have been fatal, the certificate and deed being correct and in due form. If this is so—but it is not necessary to decide the point now—having made a return, he was bound to speak the truth. The return being made became a part of the record of the case of which parties interested were bound to take notice, and upon which they were entitled to rely. If all the proceedings were regular, the owner was, perhaps, bound to know that a sale would be made, but he was not required to be present in person, and was not bound to know the terms upon which the sheriff actually sold otherwise than from the record made of it by the officer in his return as required by law, and for the purposes of giving this information.

In this case the sheriff made a return, which, as we have seen, formed a part of the public judgment record; and that record, the proper and only place to go for information, informed the world and the owner of the property sold, that the sheriff had sold a tract of land one
137 mile long by half a mile wide which was in fact laid out into a city, and in part occupied as such, to the highest bidder, for the sum of one hundred and seventy-five and $\frac{42}{100}$ dollars. The owner consulting that record, and this is the only notice he is presumed to have had, was informed that the sale was an absolute nullity on its face; and that there was nothing from which he was called upon to redeem. If he examined this record, and so concluded, he judged rightly, for the Supreme Court so held in this very case on a former writ of error. If years afterward, and after the expiration of six months from the sale, the ex-sheriff can amend his return, and his deed made in pursuance thereof, showing a valid instead of a void sale, the owner, relying on the false record, by this act loses the right of redemption. The purchaser, it is true, loses the benefit of his purchase; but he is necessarily present at the sale at which he himself buys, and knows the actual terms of sale.

He also has notice by the record of the false return, and he can
138 call upon the sheriff to correct it in time. If it be not corrected, and the record is permitted to speak a falsehood till the six months expires, it operates as a fraud—though, doubtless, unintentionally—upon the owner, by which he loses his property; and the purchaser, by having notice by the record of its falsity without requiring its seasonable correction, is in some sense a party to the fraud.

If under such circumstances either must suffer, it should be the purchaser rather than the owner, whose loss by the error is usually vastly the greater. If either must be remitted to the responsibility of the sheriff in an action for a false return, it should be the party who knows, or is bound to know, the record to be false, rather than the one who does not. That a return cannot be amended to the injury of any party was held in Newhall vs. Provost (6 Cal., 86). Freeman vs. Paul (3 Greenl., 263–4) is in point. For the very reason that it would cut off a redemption, the court refused to permit the amendment of a return by showing, in accordance with the facts, the execution of a process
139 three days earlier than appeared by the return. So in Thatcher vs. Miller (13 Mass., 273), the court refused to allow a return to be amended where an injury would have resulted. (See, also, 45 Mo., 116; 29 Vt., 332.) In Thatcher vs. Miller, the court observe: "For an officer to undertake, six years after a defective return, to know with certainty the performance of a particular duty, when he is daily and hourly performing similar duties upon different persons, is more than can be expected, however strong their memory. In the cases cited, where amendments have been permitted, there was something in the record by which the correction could be made." And this language was quoted by the court with approbation in Means vs. Osgood (7 Me., 148), cited by defendant's counsel. In the case now under consideration, McClatchy, the ex-sheriff, was examined. He could not remember this particular sale, and only testified as to what was done at the sale from his recollection of what his custom was at tax sales. He did not even state that he was personally present at the sale, and the first return was made by a deputy, who would seem
140 from the return to have made the sale; and he was not examined.

Even defendants' authorities recognize the principles stated as in Gilmore vs. Stetson (16 Me., 124) Means vs. Osgood (7 Me., 147). The cases cited by defendants are generally cases such as where a summons, for instance, has been regularly served, but the return is defective. In such case the party has had his notice by the actual service of the process upon him, not by the return. The return is to enable the court, and others interested, to see that jurisdiction has been acquired. The party is bound to act upon the service made, and not upon the evidence furnished to the court. He has had the legal notice, and no injury is done him by correcting the record, so as to show the fact. He has had his opportunity to appear and defend. But in this case the owner was not bound to attend the sale in person, or to know the mode or form of the sale, except as he got it from the record, which the law requires the officer to make of his acts at the sale. The acts at the sale are not
141 matters of record, except as they are made so by the return, and the owner gets his notice from that return, and not from a service on, or notice to, him personally. At least, he is not bound to get it elsewhere; and there is no presumption that he gets it from any other source. If, relying on the official record, which is the only notice he is presumed to have, he is misled by a falsehood in the record, and thereby fails to redeem because the record shows nothing to redeem from, he is injured by the amendment of the record after the time of redemption is past, when it is too late to protect himself. In the other case, where the service of the process is duly made, the party served has the proper legal notice, and he is not injured by the amendment showing the fact. This is the plain distinction between the two classes of cases. It does not matter that the party injured is a party generally to the action. The court

has no more right to arbitrarily injure him than a stranger. The term "not a party to the action," in some of the cases cited by defendants' counsel, is loosely used. The question, is or should be, will anybody be in-
142 jured by the amendment. In the case of a party the amendment is allowed, not because he is a party, but because being a party, and duly notified, he has all the opportunity to which he is entitled, and he is not, in fact, injured by making a correct record of matters already within his knowledge. Returns are only allowed to be amended by courts in furtherance of justice. The amendment of a return, after a right of redemption is lost, by a party relying upon the false return, would certainly not be in furtherance of justice. It is true that it is the duty of the owner by statute to make reasonable efforts to ascertain if there is any tax against him; and, if so, to pay it, and thus avoid a sale of his property; but we are looking at the question in its legal rights. No one familiar with the operation of the tax laws and sales, in this State at least, I apprehend can doubt that it is for the interest of the citizen—and such interest is the interest of the public upon the whole as well as of the individual citizen and the interest of justice—
143 that in one-sided proceedings, without actual notice to the owner, to divest his title to real estate for non-payment of taxes, the officers should be held to a rigid compliance in all important particulars with the statute upon the subject, and so the authorities in this State all hold; and that the official records of these proceedings, of which the public is bound to take notice, should be required to speak the truth, so that those interested shall not be misled to their injury. Our tax laws are complicated, and different taxes and parts of taxes are payable at different times. The tax-payer is required to hunt up his taxes, and seek the tax-gatherer, instead of the tax-gatherer seeking the tax-payer, or even notifying him individually of the tax against him.

These circumstances, together with careless assessments, especially of real estate—sometimes to wrong parties, to unknown owners, to different persons, and the like—render it difficult, if not next to impossible, for the citizen of average intelligence even to know when he is through paying taxes for any given year. Under all these difficulties,
144 and where officers charged with the execution of the law, and whose special duty it is to thoroughly familiarize themselves with their provisions, often themselves commit errors, it is not remarkable that honest citizens, absentees, women, and children, inheritors of estates of deceased persons often absent, who would willingly pay their taxes, and who endeavor to do so, sometimes make slips, and receive the first notice of an unpaid tax from the dealer in tax titles, when, with deed in hand, he demands possession of their property already sold, and the time of redemption expired. Where the period allowed for redemption from a tax sale is only six months, the time of redemption is so short as to make the right itself little less than a delusion—a right in name rather than in substance. One who has failed to find and pay the tax in time to prevent a sale would scarcely be likely to learn of the sale within six months afterwards, unless he should chance to require an examination of the title for the purpose of a mortgage or sale. Even then, professional searchers of records and experts sometimes fail to
145 make the discovery. One can hardly have occupied a seat upon the bench, or have been a practicing attorney long in this State, without having cases of tax sales and deeds brought to his attention, wherein the taking of the property by the purchaser would be little short of downright plunder, effected under the forms of law.

Parties are not likely, willfully or knowingly, to allow property of large

value to be thus sacrificed without redemption. There is usually positive ignorance or misapprehension, which, to a great extent, takes away actual culpability.

While no sympathy is due to the man who knowingly or willfully evades the payment of his share of the public burdens, or from culpable negligence fails to pay his taxes levied for the support of the government which protects him, it is, perhaps, upon the whole, fortunate that the carelessness or ignorance of those charged with the execution of the tax laws so often leaves an avenue of escape to the really honest, though unfortunate delinquent. At all invents the interests of justice man-
146 ifestly require the proceedings in tax cases to be in the strictest conformity to law in all essential particulars. I know nothing of the character of the delinquency in this particular case; but one rule must be established for all falling within the same legal principles. I think the amendment of the return and execution of the second deed under the conditions of this case, so as to cut off the right of redemption, not made in furtherance of justice, and that it was unauthorized by law. It may well be questioned whether a tax levied in solido, upon a whole tract of large extent laid out into city lots, and in part actually occupied as such, like this, and owned by a large number of different persons, as appears from the findings was the case here, is valid; and the character of the levy appears upon the face of the judgment roll. But under the view I take upon the points discussed it will be unnecessary to consider the points made upon the invalidity of the proceedings prior to the sale.

147 The original complaint was filed in this case soon after the cause of action accrued, November 8th, 1866, twelve years ago. Special findings have been prepared presenting fully all the facts upon which the rights of the parties depend. Should there be any error in the conclusions of law drawn from the facts, the appellate court will be able to reverse or modify the judgment, and render such final judgment as the rights of the parties may require, without any further trial in this court, thereby ending a long, tedious, expensive, and troublesome litigation.

Under the view I take, there is no title in any of the defendants, and no outstanding title to any portion of the premises which are specifically stated in the findings of fact to be in the possession of the several defendants therein named, other than the lots excepted in the judgment ordered, and the plaintiff is entitled to judgment.

There must be a judgment for plaintiff in accordance with the order appended to the findings.

October 7, 1878.

John Reynolds, for plaintiff.

John H. McKane and J. W. Armstrong, for defendants.

149 *Findings.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
SARAH W. EDWARDS ET ALS., DEFENDANTS.

In this case the court finds the following facts:

I. That the map marked Exhibit A, No. 1 L. S., correctly represents

the land described in the complaint, which map is hereby referred to and made a part hereof.

(Here follows map marked page 148.)

The land so platted constitutes the north half of the town of Sutter, as surveyed by C. W. Cootz for the locators of said town.

The several blocks of land (except that tier lying west of and adjoining Lake street) are subdivided into lots, each numbered from one to eight, as shown in a model block, bounded by Water, Vine, Main,
150 and Liberty streets. The several blocks so excepted are subdivided into lots numbered from one to twelve inclusive, as shown in a model block marked on said map, bounded east by Lake street and south by Main street. The line on the north side of said land runs through the middle of Salem street, as laid down on said map.

II. That on the 13th day of November, 1849, John A. Sutter was the owner of all the land described in the complaint, except about twenty-five acres thereof lying east of a dotted line marked on said map "Sutter grant line." That part so excepted includes the whole of blocks numbered 52, 53, 54 and 142, and three-fourths of block 155, nine-tenths of block numbered 141, one-tenth of block numbered 140, one-fourth of block numbered 51, and one-half of block numbered 55.

III. That on said 13th day of November, 1849, the said John A. Sutter sold and conveyed the land so owned by him to L. W. Hastings.

151 IV. That on the 25th day of August, 1849, the said L. W. Hastings sold and conveyed to Samuel Hastings the whole of said block numbered 149, part and parcel of the land so sold to him by the said John A. Sutter, for the consideration of one dollar then and there paid, which deed was duly acknowledged and recorded in book C of deeds in the office of the county recorder of the county of Sacramento, at pages 448 & 449, on the 26th day of June, 1850.

V. That the said L. W. Hastings, on the 3d day of June, 1850, by deed of that date reciting a consideration of $700, sold and conveyed to James Brown all his right, title and interest in lots eight and nine, in block 161, part and parcel of the said land conveyed to him by said John A. Sutter, which deed was duly acknowledged and recorded in the office of said recorder in book F of deeds, pages 218 & 219, on
152 the 14th day of June, 1851.

VI. That on the 9th day of June, 1853, the said L. W. Hastings, by deed of that date reciting a consideration of eight hundred dollars, sold and conveyed to Margaret W. Murphy all his right, title and interest in and to a certain piece or parcel of the land so sold to him by the said Sutter, bounded as follows: Commencing at the southeast corner of original lot No. 4, in block number 147, running thence westerly along the southerly line of said lot 80 feet, thence at right angles 30 feet, thence easterly at right angles 80 feet to Willow street, thence southerly along said Willow street 30 feet to the place of beginning, which deed was duly acknowledged and recorded in said office in book 2 of deeds, at page 618, on the 18th day of February, 1856.

VII. That on the 20th day of February, 1850, the said L. W. Hastings executed and delivered a deed of conveyance reciting a con-
153 sideration of five dollars to him in hand paid by his wife, C. C. Hastings, of lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, in block No. 187, which

block is a part of the land so sold to him by the said Sutter, which deed was duly acknowledged and recorded in the office of said recorder on the 26th day of June, 1850, in book C of deeds.

VIII. That on the 6th day of September, 1851, the said C. C. Hastings signed, delivered and acknowledged before her husband, who was then a notary public, a deed of conveyance reciting the sum of $400 paid to her by Eliza R. A. Brown, purporting to sell and convey to said Brown lots numbered 1, 2, 3, 4, 5, 6, 7, 8, and 9, in block No. 187, which block is a part and parcel of said land so sold to him by the said Sutter, which deed was acknowledged in form as a single woman and recorded in book "G" of deeds, at page 582, on the 9th day of September, 1851.

154 IX. That on the 13th day of July, 1850, said L. W. Hastings executed and delivered to Benjamin O'Devoe a deed purporting to convey to him, for consideration of $300, a lot therein designated as lot No. 2, in fractional block A, as shown on said map, and as being part and parcel of the land so sold to him by the said Sutter, which deed was duly acknowledged and recorded in the office of said county recorder on the 24th day of July, 1850, in book D of deeds, at page 338.

X. That on the 26th day of August, 1857, for the consideration of $400 to him paid in good faith by Thomas Edwards, one of the original defendants, the said L. W. Hastings granted and conveyed to the said Thomas Edwards lot No. 10, in block No. 148, according to said Cootz survey, part and parcel of the land so sold to said Hastings by the said Sutter, which conveyance was duly acknowledged on the 29th day of August, 1857, and recorded the same day in the office of the

155 recorder of said county of Sacramento, in book U of deeds, page 373 & 374.

XI. That on the 5th day of January, 1853, the said L. W. Hastings, for the good-will and respect he bore to and for Catharine L. Pettit, by deed of that date, gave, presented and quit-claimed to the said Catharine block number 2 in said town of Sutter, part and parcel of the land so sold to him by the said Sutter, which deed was duly acknowledged and recorded in the office of said recorder on the 31st day of January, 1853, in book J of deeds, at page 591.

XII. That on the 28th day of March, 1854, the said Catharine L. Pettit and A. P. Pettit, her husband, signed and delivered to John E. Miller a deed purporting to convey to said Miller, for the consideration of twelve hundred dollars, said block No. 2, which deed was on

156 the same day acknowledged in the manner stated in the certificate of acknowledgment thereto annexed, which certificate is as follows, to wit:

STATE OF CALIFORNIA,
County of Sacramento:

On this 28th day of March, 1854, personally appeared before me, a notary public in and for said county, James Queen and C. L. Pettit, and her husband, A. P. Pettit, to me to be the persons described in and who executed the foregoing instrument of writing, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein mentioned, and the C. L. Pettit was examined, separate and apart and without the hearing of her said husband, and was by me made acquainted with the contents of the foregoing instrument, and acknowledged that she executed the same freely and voluntarily, with-

out fear or compulsion from her said husband, for the uses and purposes therein mentioned, and that she not wish to retract the execution of the same.

157 Witness my hand and seal.

P. DUNLAP,
Notary Public.

Which deed, with said certificate of was on the same day recorded in the office of said recorder, on the 28th day of March, 1854, in book N of deeds, pages 127 & 128.

XIII. That on the first day of December, 1860, the defendant Leonard Hoyt acquired all the right, title, and interest in said block 2 which was conveyed to John E. Miller by the deed mentioned in the last finding, by deed reciting a consideration of $500, which deed was duly acknowledged and recorded on the 31st day of December, 1860, in book 29 of deeds, page 99.

XIV. On the 6th day of July, 1850, Thomas J. Henly, O. McKnight, and S. C. Hastings commenced an action against L. W. Hastings, Henry Cheever and Peter Wimmer, in the district court of the 6th judicial district of the State of California for the county of Sacramento.

158 That on the same day a judgment was entered in said action. That on the 26th day of August, 1850, an execution was issued upon said judgment and placed in the hands of Peter F. Ewer, coroner of Sacramento County, on the 1st day of October, 1850; Henly and Hastings, two of the plaintiffs, endorsed upon said execution the receipt appearing thereon. That on the 20th day of March, 1851, S. C. Hastings and Thomas J. Henly, two of the plaintiffs, endorsed upon said execution the acknowledgment which appears thereon endorsed, filed March 21st, 1851.

That afterwards, on the 25th day of June, 1853, an alias execution was issued in said case, and placed in the hands of A. D. Patterson, sheriff of Sacramento County; that said Patterson afterwards returned said execution with his return endorsed thereon. The said judgment and the judgment-roll, and the said execution and the returns and the endorsements made thereon, together with assignment by S. C. Has-

159 tings and Thos. J. Henly of their interest in said judgment to Henry Cheever, and the sheriff's certificate of sale, are in the words and figures following, to wit:

Complaint and confession.

STATE OF CALIFORNIA,
County of Sacramento, 6th judicial district:

THOS. J. HENLEY, O. MCKNIGHT AND S. C. Hastings
vs.
L. W. HASTINGS, HENRY CHEEVER, AND Peter Wimmer.

To the hon'l Jas. S. Thomas, judge of the 6 judicial district of the State of California:

The def'ts in the above entitled suit, L. W. Hastings & Peter Wimmer, in person, and Henry Chever, by his legally authorized att'y, E. J. C. Kewen, come and make the following statement:

1st. Said def'ts, as aforesaid represented, say that L. W. Hastings

and Henry Chever compose the firm of "L. W. Hastings & Co.," for which firm the said Peter Wimmer is endorser, all doing business in the
160 county & city of Sacramento & State of California, and that they, the said L. W. Hastings, Henry Chever, and Peter Wimmer, are justly indebted to and owe unto the pl'ffs, Thos. J. Henley, O. McKnight, and S. C. Hastings, partners, trading under the firm-name of Henley & Co., in the city and State aforesaid, in the sum of nine thousand & five hundred doll's, for which amount they hereby authorize the hon'l the district court of the 6th judicial district for the county of Sacramento and State of California "to enter judgment thereon" by confession.

2nd. Said def'ts, as aforesaid represented, say that they are justly indebted to said pl'ffs aforenamed for said sum aforementioned, as money loaned to them for a valuable consideration by said pl'ffs, and that they hereby authorize the confession of judgment aforesaid to secure the payment of a debt justly due, and with no intent to defraud their creditors.

July 6th, 1850.

HENRY CHEVER,
By his attorneys, KEWEN AND MORRISON.
L. W HASTINGS.
his
PETER L. + WIMMER.
mark.

Witnessed by me this 6th July, 1850.
JAS. W. BARRY.

161 STATE OF CALIFORNIA,
County of Sacramento:

Personally appeared before me, P. Dunlap, clerk of the county and State aforesaid, James W. Barry, who, being duly sworn, says that he witnessed the above L. W. Hastings and Peter Wimmer affix their hands and seals to the above instrument on the day and year therein mentioned.

JAS. W. BARRY.

Sworn to and subscribed before me this July 6th, 1850.
P. DUNLAP, *Clerk.*

(Endorsed:) Filed July 6th, 1850. P. Dunlap, clerk district court. Bigler and Latham, att'ys for pl'ffs.

Judgment.

District court Sacramento County, July T., 1850.

SATURDAY MORNING, *July 6th*, 1850.

Court met pursuant to adjournment.
Present: Hon. James S. Thomas, judge, &c.

162 THOMAS J. HENLEY, ORLANDO MC-KNIGHT, AND S. C. HASTINGS
vs.
L. M. HASTINGS, HENRY CHEEVER, PETER L. WIMMER.

And now on this day came into court here Milton S. Latham, an attorney of this court, and filed the written confession of judgment of the

above defendants in this case for the sum of nine thousand five hundred dollars. It is therefore considered and adjudged by the court that the said plaintiffs do have and recover of the defendants, on occasion of the premises, the sum nine thousand five hundred dollars, together with the costs of this suit.

(Signed) J. S. THOMAS,
Judge.

Execution.

STATE OF CALIFORNIA,
Sacramento County, ss:

District court for said county.

The people of the State of California to the sheriff of Sacramento County, greeting:

163 We command you that of the personal estate of L. W. Hastings, Henry Cheever, and Peter L. Weimer (and if insufficient personal, then of his real estate), you cause to be levied and made the sum of nine thousand five hundred dollars, with interest thereon at the rate of ten per cent. per annum from the 6th day of July, 1850, until paid; also, the sum of twenty-two and 50c. clerks' costs before rendition of judgment, and three dollars costs of the execution and fee bill, and make due return hereof within 60 days from this date; in the requirements hereof fail not under the penalty of the law.

Witness P. Dunlap, clerk of our said court, at office in Sacramento City, this 26th day of August, A. D. 1850.

[SEAL.] P. DUNLAP, *Clk.*
By SAM. McKEE, *D. C.*

Fee bill.

THOS. J. HENLY, *vs.* L. W. HASTINGS, &C. } Clerks' fees.

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Ent. suit without process, $2.00; filing compl't, 50	$2 50
Affidavit, $1; ent. appearances, $6.00	7 00
Ent. motion for confession, $1; ent. order do., $1.00	2 00
Ent. judg't, 4.00; ent. satisfaction, $3.00	7 00
Taxing costs, $1	1 00
Taking transcript for record	3 00
	22 50
Execution & this fee	3 00
	$25 50

(Endorsed:) Rec'd August 26th, 1850, at 4½ o'clock p. m. Peter F. Ewer, coroner and acting sheriff.

By virtue of the within writ of execution which came into my hands on the 26th day of August, 1850, I have this, the 26th of August, 1850, levied upon the following-described property to wit:

Lots No. 5, 6, 7, 8, in block No. 7, in the town of Sutter.
" " 3, 4, 5, 6, 7, 8, " " " 9, " " " " "
" " 2, 34, " " " 186, " " " " "
" " 1, 2, 3, 4, 5, 6, " " " 188, " " " " "
" " 1, 3, 5, " " " 187, " " " " "
" " 1, 2, 3, 4, 5, 8, " " " 169, " " " " "
" " 1, 4, 5, 6, 7, 8, " " " 170, " " " " "
Block No. 130, in the town of Sutter.
" " 10, " " " " "
165 Block No. 11, in the town of Sutter.
" " 131, " " " " "
" " 132, " " " " "
" " 133, " " " " "
" " 144, " " " " "
" " 145, " " " " "
" " 146, " " " " "
" " 156, " " " " "
" " 158, " " " " "
" " 159, " " " " "
" " 171, " " " " "
" " 172, " " " " "
" " 182, " " " " "
" " 183, " " " " "
" " 185, " " " " "

Also, all that certain piece or parcel of land situate, lying, and being in the city of Sac'to and State of California, and known and distinguished on the map or plan of said city as lot No. 3, in the square bounded by Front and Second and N and O street.

P. F. EWER,
Coroner and Acting Sheriff.
By J. N. TRACY, *D'p't.*

Also, the following lots of land situate in the town of Sutter,
166 taken as the property of the said Weimer, together with all the right, title, and interest which the said Weimer has in the said town of Sutter, said lots being described as follows:

Lots	in	blocks.	Lots	in	blocks.
2, 4, 6, & 8,	"	11.	4 & 8,	"	12.
2, 4, 6, & 8,	"	13.	2, 4, 6, 8, 10 & 12,	"	14.
1, 2, 3, 4, 5, 6, 7 & 8,	in	16.	2, 4, 6, & 8,	"	57.
2, 4, 6, & 8,	"	56.	2, 4, 6, & 8,	"	55.
2, 4, 6, & 8,	"	54.	2 & 4,		7.
2, 4, 6, & 8,	"	5.	2, 4, 6, & 8,		4.
2, 4, 6, 8, 10 & 12,	"	3.	4 & 8,		1.
2, 4, 6, & 8,	"	51.	2, 4, 6, & 8,		52.
2, 4, 6, & 8,	"	53.	2, 4, 6, & 8,		143.
4 & 8,	"	133.	2, 4, 6, & 8,		134.
2, 4, 6, 8, 10 & 12,	"	135.	2, 4, 6, & 8,		137.
1, 2, 3, 4, 5, 6, 7, & 8,	"	138.	2 & 4,		139.

Rec'd by notes on Barton Lee, secured by mortgage, of Henry Cheever, one of the defendants, satisfaction of the within execution (except costs not p'd).

OCT. 1, 1850. HENRY & HASTINGS.
Returned Oct. 12th, 1850. P. DUNLAP, *Clk.*

167 *Assignment.*

This is to certify that we, Thomas J. Henley & S. C. Hastings, for and in consideration of the sum of ten thousand dollars, to us in hand paid, the receipt whereof is hereby acknowledged, have assigned and transferred, and by these presents do assign and transfer, to Henry Cheever a certain judgment rendered in the district court of Sacramento County, in favor of us, the said Henley and Hastings against L. W. Hastings, Henry Chever, and Peter L. Wimmer, the said judgment being the only one rendered in our favor against the said parties in the said court, which said judgment was paid and satisfied as to us by the said Henry Chever, a surety upon the claim upon which said judgment was founded.

S. C. HASTINGS.
THOS. J. HENLEY.

(Endorsed:) Filed March 20th, 1851. P. Dunlap, cl'k, by Wm. A. Ransom, D. C.

168 STATE OF CALIFORNIA,
County of Sacramento, ss:

District court of the sixth judicial district of said State.

The people of the State of California to the sheriff of Sacramento County, greeting:

Whereas on the 6th day of July, A. D. 1850, to wit, in the district court for Sacramento County and State aforesaid, Thomas J. Henley, O. McKnight, and S. C. Hastings recovered judgment against L. W. Hastings, Henry Cheever, and Peter Weimer for the sum of nine thousand five hundred dollars (debt) with interest on the said sum of 9,500 dollars, from the 6th day of July, 1850, at the rate of ten per cent per annum, together with twenty-two and $\frac{50}{100}$ dollars costs of suit, and $26.50 since judg't, you are therefore commanded to levy and cause to be made by distress and sale out of the personal property of said defendant, and if sufficient personal property cannot be found, then out of the real property belonging to them at the time of filing transcript of this judg't in recorder's office, the said sums set forth as afore-
169 said, together with accruing costs; and that you make due return of this writ in sixty days.

Herein fail not, &c.

Witness, Lewis B. Harris, clerk of the court aforesaid, with the seal thereof hereto affixed, at office, in the city of Sacramento, this 25 day of June, A. D. 1853.

[SEAL.] LEW. B. HARRIS,
Clerk.

(Endorsed:)

By virtue of the within writ of execution I have this day levied on all the right, title, interest, and claim of L. W. Hastings, of, in, and to the following-described property, and being in Sacramento County and State of California, to wit, all the interest of the def't, of, in, and to the property known as the town of Sutterville, July 15, 1853.

A. D. PATTERSON, *Sh'ff*,
By D. N. HUNT, *Under Sh'ff.*

Sheriff's sale.

By virtue of an execution, to me directed, issued out of the hon. district court, sixth judicial district, on a judgment rendered on the 6th day of July, A. D. 1850, in favor of Thomas J. Henley, O. McKnight, and S. C. Hastings, and against L. W. Hastings, Henry Cheever, and Peter Wernier for the sum of $9,500, with interest thereon at the rate of ten per cent. per annum, from the 6th day of July, A. D. 1850, together with the sum of $49.00 costs, I have levied upon and seized, and will expose to public sale at the court-house door, in Sacramento City, on the 12th day of August, 1853, at the hour of 11 a. m., all the right, title, interest, and claim of the said L. W. Hastings, of, in, and to the following-described property lying and being in Sacramento County and State of California, to wit, the entire interest of the said L. W. Hastings, of, in, and to the property known as the town of Sutterville, situated on the Sacramento River, one mile and a half below the city of Sacramento.

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A. D. PATTERSON,
Sheriff of Sacramento County,
By D. N. HUNT,
Under Sheriff.

SACRAMENTO CITY, 25 *August*, 1853.

Received from A. D. Patterson, sheriff, four hundred and fifty-seven dollars, on the within execution.
$457.00.

JOHN B. MILLIKEN.

171

Certificate of sale.

District court, 6th judicial dist.

HENLEY MCKNIGHT & CO. *vs.* L. W. HASTINGS. } Execution.

I hereby certify that under and by virtue of an execution to me directed issued out of the hon. district court of the 6th judicial district on a judgment rendered on the 6th day of July, A. D. 1850, in favor of Thomas J. Henley, O. McKnight, and S. C. Hastings and against L. W. Hastings, Henry Cheever, and Peter Wernier for the sum of ($9,500) nine thousand five hundred dollars, with interest thereon at the rate of ten per cent. per annum, from the 6th day of July, A. D. 1850, together with the sum of forty-nine dollars ($49) costs of suit, I proceeded on this day, August 12th, A. D. 1853, after giving lawful notice, to sell to the highest and best bidder for cash, the following described property, lying and being in Sacramento County, and State of California, to wit: The entire interest of L. W. Hastings, of, in, and to the property known as the town of Sutterville, situated on the Sacramento River, one mile and ½ below the city of Sacramento, and John B. Milliken being the highest and best bidder therefor, at the price and for the sum of five hundred dollars for the whole of the interest of L. W. Hastings to the above and foregoing described property, the same was struck off and sold to him for that sum, subject to all the rights of redemption under the statute in such cases made and provided.

172

Given under my hand and private seal this August 12th, A. D. 1853.

A. D. PATTERSON, *Sh'ff.*

STATE OF CALIFORNIA,
County of Sacramento, ss:

I, E. D. Shirland, clerk of the district court of the sixth judicial district, in and for the county of Sacramento, State of California, hereby certify that the above and foregoing is a full and correct copy of the original record and proceedings and certificate of sale in the aforesaid entitled cause, as the same now remains of record and on file in the office of said court.

Witness my hand with the seal of our said court affixed, at the city of Sacramento, the county seat of the county of Sacramento, this 25th day of March, A. D. 1867.

EDMOND D. SHIRLAND,
Clerk of the Court aforesaid.

[U. S. revenue stamp, 5 c., cancelled.]

173 That said several documents with the endorsements thereon as they are above found were all attached, together with the judgment roll, in the clerk's office. The said several signatures to the various documents and endorsements aforesaid are genuine, and all said documents and endorsements were executed as they appear to have been.

That on the 8th day of April, 1854, said Patterson executed and delivered to John B. Milliken a deed in the words and figures following, to wit:

This indenture, made and entered into by and between A. D. Patterson, ex-sheriff of the county of Sacramento, State of California, party of the first part, and John B. Milliken, the party of the second part, witnesseth as follows:

Whereas a writ of execution directed to the said party of the first part, as sheriff of said county, issued out of the clerk's office of the district court of the sixth judicial district, in and for the county of Sacramento aforesaid, on the 25th day of June, A. D. 1853, upon a
174 judgment recorded in said court, on the 6th day of July, A. D. 1850, in favor of Thomas J. Hanley, O. McKnight, and S. C. Hastings, and against L. W. Hastings, Henry Cheever, and Peter Weimer, for the sum of nine thousand five hundred dollars ($9,500), together with interest thereon from the 6th day of July, A. D. 1850, at the rate of ten per cent. per annum, together with $49 costs, which execution was received by the said party of the first part as sheriff as aforesaid, on the 25th day of June, A. D. 1853, whereby he was commanded to levy upon and cause to be sold at public auction, to the highest bidder, for cash, the following described property, to wit, the entire interest of the said L. W. Hastings, of, in, and to the property known as the town of Sutterville, situated on the Sacramento River, one mile and a half below the city of Sacramento, and that if the proceeds of such sale be insufficient to pay the amount of the judgment, interests, and costs aforesaid, together with all accruing costs and charges, he should levy upon and
175 cause the same to be made out of the personal property of the defendant, and if sufficient personal property could not be found then out of the real property of the defendant, or out of the real property belonging to him at the time of docketing said judgment in the county aforesaid, as by the said execution, reference being had thereto, more fully appears; and whereas, after the coming of the said writ of execution to hands of the said party of the first part as sheriff aforesaid, and before

the return day thereof, he did, by virtue of the said writ of execution, seize and take the lands hereinbefore described, to satisfy the said judgments, costs, and charges, and after giving legal notice, sold the said lands according to the statute in such case made and provided, to John B. Milliken, for the sum of five hundred dollars ($500) that being the highest sum bid for the same, on the 12th day of August, A. D. 1853; and whereas upon the day of said sale, viz: the 12th day of
176 August, A. D. 1853, duplicate certificates thereof were made out and subscribed by the said party of the first part as sheriff aforesaid, containing a particular description of the premises sold; the price bid for the whole of the above described property, the whole consideration money paid, and the time when the said sale would become absolute and the purchaser be entitled to a deed of conveyance pursuant to law, one of which duplicate certificates was after the sale of said lands filed with the recorder of Sacramento County, and the other delivered to the said purchaser, and whereas the said premises after the expiration of six months from the day of said sale remained unredeemed, and no creditor of the said L. W. Hastings hath acquired the right or title of the said purchaser according to the statute in such case made and provided.

Now therefore, know ye, that the said party of the first part, as sheriff as aforesaid, by virtue of said writ and sale, and of the statute in such
177 case made and provided, and in consideration of five hundred dollars ($500) to me in hand paid by the said John B. Milliken, the receipt of which is hereby acknowledged, and in further consideration of the premises, have granted, bargained, and sold, and by these presents do grant, bargain and sell unto the said John B. Milliken, and to his heirs and assigns forever, all and singular the before described real estate situated in the county of Sacramento, together with all the appurtenances thereunto belonging, and all the right, title, and interest which the said L. W. Hastings had in said tracts, pieces, or parcels of land, on the 6th day of July, A. D. 1850, or at any time since or which he now hath.

To have and to hold the said lands and premises and every part thereof with the appurtenances unto the said John B. Milliken, his heirs and assigns forever, as fully and absolutely as I, the said A. D. Patterson, sheriff as aforesaid can, might or ought to sell and convey the same.

In witness whereof I have hereunto set my hand and
178 seal the 8th day of April, A. D. 1854.

A. D. PATTERSON. [SEAL.]
Ex-Sheriff.

XV. On the 29th day of January, 1853, L. W. Hastings and C. C. Hastings, his wife, sold, and conveyed to William K. Weston, Robert H. Vance and Henry A. Breed an undivided half of all the land described in the complaint in this case belonging to the grantors, on the condition the grantors obligate themselves to build and construct, within 90 days from the date of said deed, a wharf 100 feet in length upon the river in front of said town and to place immediately a good and substantial store-ship in front of the levy, and to construct a plank road from the river to the highland, and the said Western, Vance, and Breed then and there obligated themselves to perform said condition.

XVI. That on the 20th day of March, 1853, the said L. W. Hastings and C. C. Hastings, his wife, sold and conveyed to W. K. Weston,
179 R. H. Vance, and Henry A. Breed all their right, title, and interest in and to the following described lot of land lying and being within

the town of Sutter, Sacramento County, State of California, according to the plan of said town, said lots being and lying within such portions of said town as are bounded on the north by Salem street, east by Washington avenue, on the south by Main street, and on the west by Olive street, and known on the above described portion of said map as lots having odd numbers in blocks numbered 190, 189, 186, 173, 174, 175, 176, 177, 160, 161, 162, 163, 164, 147, 148, 150, 151, 134, 135, 136, 137, 138, 4, 3, 1, 49, 50, 51, 52, 53, 54, 55, 56, 57, 15, 16, 14, 13, and the westerly half from the all'y of blocks numbered 191, 178, 165, 152, 139, and lot No. 5, in block 139, and the southerly half of blocks 140, 141, and 142, meaning to convey unto the said Western, Vance, and Breed one entire and complete half of the lots contained within the above numbered blocks, being all the odd numbered lots of
180 blocks above mentioned. This deed contained a proviso that the said Western, Vance, and Breed should perform all the conditions provided in the deed described in finding 15.

XVII. That on the 23d day of March, 1853, the said L. W. Hastings and C. C. Hastings executed and delivered to the said Western, Vance, and Breed an instrument in writing reciting the two deeds mentioned in finding 15 and 16, acknowledging that the said Western, Vance, and Breed had faithfully and promptly performed to their entire satisfaction all the conditions mentioned in the said deeds, making said two deeds absolute, which said two deeds were duly recorded at the several dates thereof, and the said acknowledgments duly recorded in the office of the recorder of said county on the 13th day of April, 1853, in book "K" of deeds, page 202.

XVIII. That on the 20th day of April, 1853, said Henry A. Breed, R. H. Vance, and W. K. Western sold and conveyed to Jefferson
181 Lake lots Nos. 11 & 12, in block number 173, further described in the deed thus, according to the subdivision of each block by Wm. K. Weston from a plan of said town of Sutter, now on file in the county recorder's office in Sacramento County. Each lot has a front on Willow street of twenty feet, and a depth of one hundred and forty feet, and which block is part and parcel of the land described in the complaint, which said conveyance recited the consideration of $300, and also described the grantors as trustees of "The Sutter Land Company," and was duly acknowledged and recorded on the 3d day of May, 1853, in book K of deeds, page 253.

XIX. That on the 3d day of March, 1853, the said Western, Vance, and Breed sold and conveyed to B. B. Brown and Eliza R. H. Brown, his wife, lots 2, 3, 4, and 7, and the east half of lot 5 in block 187, in said north half of said town of Sutter, which conveyance was then and there duly acknowledged and recorded in the proper book.

XX. That on the 4th day of June, 1853, R. H. Vance granted,
182 bargained, sold, and conveyed to George R. Knox part of lot 1 in block 135, commencing on a corner of an alley 140 feet west from Lake street on Drumond street, thence southerly on said alley 80 feet, thence easterly 40 feet, thence northerly 80 feet, thence westerly 40 feet to the place of beginning, which conveyance was then and there duly acknowledged and recorded.

XXI. That on the 25 day of May, 1853, said R. H. Vance sold and conveyed to Abram T. Melvin, Robert H. Vance, and R. G. Sneath, trustees of the Sutter Land Company, and their successors in trust for said Sutter Land Company, all the right, title, and interest of the said Vance in and to the following pieces or parcels of land being and lying in said town of Sutter, known and designated upon a map of said town, the north half of which said town is represented by the map described in finding one, that is to say, lot 10, block 161; lots 13, 14, 17, 18, 19, & 20, block 161, according to subdivision of said block by W. K. Weston.

183 XXII. That on the 1st day of June, 1853, said R. H. Vance sold and conveyed to Levi Decker a part of lot 3 in block 161 in said town of Sutter "commencing on the alley at the east end of said lot running west along Chrystal street twenty-five feet, thence southerly at right angles with Chrystal street eighty feet, thence easterly twenty-five feet, thence northerly along said alley eighty feet to place of beginning," which conveyance was then and there duly acknowledged and recorded.

XXIII. That on the 22d day of April, 1853, Henry A. Breed, W. K. Weston, and R. H. Vance executed and delivered to Abram T. Melvin, R. G. Sneath, and R. H. Vance a certain deed of conveyance, which was then and there duly acknowledged, and on the 10th day of May, 1853, was duly recorded in the office of the recorder of said county of Sacramento, in book K of deeds, at page 278 & 279; said deed is in words and figures as follows:

Breed, Weston, & Vance to Melvin, Sneath, and Vance, trustees Sutter Land Company.

184 This indenture made this 22d day of April, in the year of our Lord one thousand eight hundred and fifty-three, between Henry A. Breed, Wm. K. Weston, and Robt. H. Vance, of the city of San Francisco, on the one part, and Abram T. Melvin, R. G. Sneath, and Robert H. Vance, as trustees of the "Sutter Land Company," on the other part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one hundred dollars to them in hand paid by the parties of the second part, the receipt of which is hereby acknowledged, have this day bargained, sold, and conveyed, and by the presents do bargain, sell, and convey unto the parties of the second part (in trust), their successors and assigns, all the right, title, and interest which they now have in the real estate situated in the town of Sutter, Sacramento County, embracing certain conveyances of real estate made to the parties of the first part by Charlotte C. Hastings, James Brown, L. W. Hastings, William Cline, Wm. Schleider, W. S. Mesick, John McDougal, John A. Fowler, Jonathan D. Stevenson, Albert M. Winn, Eugene F. Gillespie, George McKinstry, Eliza
185 R. A. Brown, Daniel E. Hastings, Wm. Blackburn, Richard Woods, and from other parties not here enumerated, but which are of record in Sacramento County. To have and to hold the above conveyed and described property with all the privileges thereunto belonging to the said Melvin, Sneath, and Vance as trustees and in trust for the benefit of the Sutter Land Company and their successors in office or assigns for their benefit forever.

In witness whereof we have hereunto set our hands and seals the day and year above written.

HENRY A. BREED. [SEAL.]
WM. K. WESTON. [SEAL.]
ROBT. H. VANCE. [SEAL.]

Sealed and witnessed by—
B. W. MUDGE.

XXIV. That between the 7th day of May, 1853, and the 28th day of September, 1853, the said A. T. Melvin and R. H. Vance executed deeds of conveyance, reciting full valuable consideration, whereby they conveyed all the right, title, and interest which they could convey in and to the lots therein mentioned to the grantees therein named
186 as follows, to wit: To Levi Decker, lots 9 and 10 in block 160; also lots 22 and 23 in block 187; also lot 1, block (150). To Henry A. Breed, lot 10 in block 187, and lot 3 in block 148; also lot 1 in block 147, lot 3 in block 189, and lot 9 in block 174, and lot 1 in block 163; lot 1 in block 16; lots 3 & 7 in block 1, and lot 7 in block 175.

To Benjamin Sprague, lot 5 in block 186; lot 7 in block 174, and lot 3 in block 162.

To R. F. Perkins, lot 1 in block 161; also lot 7 in block 174, and lot 3 in block 16.

To Edward A. Breed, lot 3 in block 136.

To Nathaniel S. Petit, lot 7 in block 189, and lot 7 in block 49.

To William Vance, lot 1 in block 150.

To James Galoway, lot 3 in block 188.

To W. A. Abbott and B. Dore, lot 7 in block 163; also lots 3,
187 45, 46, 47 and 48 in block 136; also lot 21 in block 174.

To R. O. Dewit, lot 45 in block 162.

To J. T. Wyman and Wirt Huntington lots 5 & 6 in block 187.

To J. B. and J. H. Leonard lots 7 in block 188.

To S. T. Western lot 7 in block 16.

To Nelson Evans lot 36 in block 139; lot 22 in block 174.

To A. D. Courtwright lot 35 in block 150.

To J. K. Dennison lot 36 in block 150.

To O. B. Morse and D. Y. Baily lot 21 in block 161.

To Wm. Snelling lots 26 & 27 in block 174, lots 46 & 47 in block 162; lots 33 & 34 in block 175, said several blocks named in said deeds being the blocks laid out and numbered on the map annexed to the first finding.

That on the 27th day of May, 1853; the 26th day of May, 1853; the 30th day of May, 1853, and the 15th day of June, 1853, respect-
188 ively the said R. H. Vance and R. G. Sneath executed deeds of conveyance, reciting full valuable consideration, whereby they conveyed all the right, title and interest which they could convey in and to the lots therein mentioned to the grantees therein named as follows, to wit:

To Woodruf and Johnson lot 10 in block 161.

To Sneath, Arnold & Co. lots 2 & 5 in block 148.

To J. S. Wilson lot 23 in block 162.

To Abram T. Melvin lot 9 in block 148.

Said several blocks named in said deeds being the blocks laid out and numbered on the map annexed to the first finding.

In each of the deeds referred to in this finding the grantors therein named are described as trustees of the Sutter Land Company.

On the 28th day of July, 1857, said N. S. Petit conveyed said lot 7 in block 189, and lot 7 in block 49 to plaintiff grantor R. H. Vance.

189 XXV. That on the 8th day of September, 1858, one N. S. Pettitt commenced an action in the district court of the 6th judicial district in and for the county of Sacramento and State of California, against R. H. Vance, J. B. Leonard, M. S. Brad, R. G. Sneath, William Maldrom, John Agate, William Perkins, D. L. D. Sheldon, Joseph H. Leonard, William Hart, C. C. Breed, S. E. Alden, William K. Weston, Abott Dore, Samuel Day, Levi Decker, O. M. Alden, J. H. Penner, M. B. Ashun, S. Morris, T. Parden, Geo. Brown, H. S. Bunker, E. E. Connor, William Vance, N. Huntington, J. P. Wymon, Elijah Case, H. T. Brown, Alfred Redington, William A. Sampson, Erastus Bartlett, Joseph Graves, John Doe, and Richard Roe, as defendants, alleging in his complaint that the defendants are indebted to him in the sum of $250.00 and interest which are due and owing, and payable from defendants to him, as a balance on account for money paid, laid out, and expended by the

190 plaintiff for the defendants at their request, and for work, labor, and services rendered and performed by the plaintiff for the defendants at their request as per a stated and settled account annexed to said complaint, which account it is alleged was stated and agreed to by and between the parties to said action, and acquiesced in by the defendants, whereby the defendants promised to pay to the said Pettit, the plaintiff, the sum of $250.00 and interest; and the said Pettit in said complaint prayed for judgment for the sum of $250.00 with the interest and costs. It was also alleged in said complaint that said defendants in that action were partners and shareholders in, and composed the Sutter Land Company; and there was annexed to said complaint an account against said Sutter Land Company for the sum of $703.19, with a credit thereon of $433.00 by cash from assessments collected from January 2d to March 3rd, 1856, and a credit of $20.00 paid by R. H.

191 Vance, July 15th, 1858, leaving a balance of $259.79, with a statement signed L. B. Leonard, R. H. Vance, M. S. Read, and R. G. Sneath as directors of the Sutter Land Company, stating that said bill had been examined and approved by them.

The defendants appeared in said last-named action, and on the 29th day of November, 1858, filed there answer, a copy of which is as follows, to wit:

District court, sixth judicial district.

STATE OF CALIFORNIA,
Sacramento County:

N. G. PETTIT, PLAINTIFF,
vs.
ROBERT H. VANCE, WM. MULDREW, M. Geo. Read, R. G. Sneath, John Agate, Wm. Pukins, D. L. D. Sheldon, J. B. Leonard, Jas. H. Leonard, Wm. Hart, C. C. Breed, S. E. Alden, Wm. K. Weston, Abbott & Dore, Samuel Day, Levi Decker, O. M. Alden, J.
192 H. Pinnor, M. B. Askin, G. Morris, T. Parden, George Brown, H. S. Bunker, E. E. Cannon, William Vance, N. Huntington, J. P. Wyman, Elisha Case, H. F. Brown, Alfred Reddington, Wm. A. Sampson, Erastus Bartlett, and Josiah Graves, defendants.

The defendants who compose the association known as the "Sutter Land Company," come, by their attorney, Gilbert M. Cole, and for answer to plaintiff's complaint herein filed, confess the indebtedness to plaintiff herein alleged.

For further answer herein, and as well on their own behalf as for the plaintiff, and for the purposes of equity and justice, the defendants allege and set forth that the said assoaiotion known as the Sutter Land Company was formed early in the year 1853, in the manner and for the purposes and objects specified in certain articles of association,
193 which are hereto annexed, marked A, and which defendants pray may be made and considered part of this answer.

Defendants further show to this honorable court that they, as the said Sutter Land Company, acquired and are now the just owners of certain real estate located in this county, which real estate is now held in the company name of said association, and is divided into many separate lots and parcels, and interests in lots and parcels, and is owned by the defendants in the proportions hereinafter mentioned; all of which real estate is set forth fully in the schedule hereto annexed, marked B; and defendants pray that said schedule may be made and considered a part of this answer; and the defendants further allege, that the said real estate constitutes all the property, of whatever description, at present or of late owned by the said Sutter Land Company.

And the defendants further show to this hon. court that the said Sutter Land Company is justly indebted, in addition to the said debt due to plaintiff, as follows, to wit:

194 To R. H. Vance for cash paid for searching records and abstract of title to said property	$100 00
To cash by him paid to N. S. Pettit on acc't of company	20 00
For cash paid by him as taxes on said land for 1857 & 8	157 00
Total am't due R. H. Vance	$277 00
To R. G. Sneath for cash advanced for searching records and abstracts of title to said real estate	100 00
Total am't due R. G. Sneath	$100 00

To J. B. Leonard for cash paid as taxes on said real estate for 1857 & '8 ..... $100 00
And interest on same 31 00

Total am't due J. B. Leonard $131 00

And the defendants further say that the foregoing constitutes all the indebtedness of said Sutter Land Company, either due or to become due, except the expenses of this action.

And the defendants further show to this hon. court, that all the property of said company is owned by them.

195 The defendants in shares as follows:

Robert Vance	owns	108	shares.
William Muldrew	"	76	"
M. Geo. Read	"	25	"
R. G. Sneath	"	16	"
John Agate	"	16	"
William Perkins	"	5	"
D. L. D. Sheldon	"	2	"
J. B. Leonard	"	29	"
Joseph H. Leonard	"	2	"
William Hart	"	20	"
C. C. Breed	"	22	"
S. E. Alden	"	11	"
William R. Weston	"	24	"
Abbott & Dore	"	2	"
Samuel Day	"	3	"
Levi Decker	"	10	"
O. M. Alden	"	6	"
J. H. Pinnor	"	1	"
M. B. Askins	"	1	"
G. Morris	"	1	"
T. Parden	"	1	"
George Brown	"	8	"
H. S. Bunker	"	2	"
E. E. Cannon	"	16	"
William Vance	"	8	"
N. Huntington	"	3	"
J. P. Wyman	"	3	"
Elijah Case	"	4	"
196 H. F. Brown	owns	25	shares.
Alfred Reddington	"	10	"
Wm. A. Sampson	"	5	"
Erastus Bartlett	"	10	"
Isiah Graves	"	25	"
		500	

And the defendants further show to this hon. court that the affairs of said company are in distracted condition, and the said company is no longer an active or profitable concern; that the existence of the said company involves expenses from time to time which the company is unable to pay out of any legitimate funds belonging to it, and the said company is unable to raise funds for such purpose; that it is impossible to make a fair, just, or proper divison of the said property among the shareholders of the same, and all of the stockholders of the said company, to

wit, the defendants in this action, are willing and extremely anxious to have the affairs of said company wound up and the property sold
197 in pursuance of a decree of this hon. court, in order to pay the debts of the said company, and that the balance of the proceeds of said sale, if any balance there should be, may be distributed pro rata among the said shareholders, as will more fully appear to your honor from a certain agreement and petition signed by the said shareholders, which said agreement is hereto attached, marked C, and which defendants pray may be made and considered a part of this answer.

Therefore the defendants pray that this honorable court will, by its judgment herein, direct a sale of the property set forth in said schedule, marked B, and that the proceeds arising therefrom be applied as follows:

First. To the payment of the said indebtedness to plaintiff.

Second. To the payment of the other indebtedness of said company, should there be sufficient arising therefrom to pay said indebtedness; and, if not, then that the same be distributed among the creditors of said company pro rata, and should more than enough
198 arise from said sale to pay the indebtedness of said company then Third. That the balance be distributed pro rata among the shareholders of said company according to the amount of stock owned by each.

And for such other and further relief as may be just and equitable.

G. M. COLE,
Att'y for Defendants.

(Endorsed:) I acknowledge service of the within answer, and waive copy.

Nov. 29th, 1858.

C. COLE,
Att'y for Pl'ff.

(Endorsed:) Filed Nov. 29th, 1858. J. B. Dayton, clerk. by Ham. C. Harrison, dep. clerk.

199 A.

Articles of Association of the Sutter Land Company.

Whereas heretofore, to wit, on the 24th day of January, A. D. eighteen hundred and fifty-three; an agreement was entered into by and between Jonathan D. Stephenson and other land owners of the town of Sutter, county of Sacramento, State of California, of the one part, and William R. Weston, Robert H. Vance, and Henry A. Breed, of the city and county of San Francisco, State aforesaid, of the other part; and whereas said Stephenson and other land owners have conveyed to said Weston, Vance, and Breed one undivided half of the land in the town of Sutter, provided that they, the said Weston, Vance, and Breed, shall contract and complete, within ninety days from Jan. 24th, 1853, a proper wharf or landing place on the banks of the Sacramento River, and a bridge twenty feet wide, extending from the levee to the high
200 ground of about eighteen hundred feet long; and whereas the construction and completion of such improvements so undertaken by the said Weston, Vance, and Breed, and the use and management of the same requires an association of capital and an organization for the safe and judicious management thereof; and whereas the said Weston, Vance, & Breed have associated with themselves the following named

persons, to wit: L. Flagg & Co., A. T. Melvin, R. T. Perkins, Edward A. Breed, Uriel Huntington, R. G. Sneath, Benj. Sprague, S. W. Burke, B. W. Mundge, Wm. Vance, Ellis & Pierce, Elijah Case, Joseph Galloway, Wm. A. Simpson, Anson M. Hunt, S. E. Allen, D. O. Sheldon, Jas. B. Leonard, Jas. H. Leonard, George Brown, W. S. Pettit, and all others who may hereafter become parties to these presents severally and collectively, each for himself to and with each and all of the other parties, and to become parties hereto. That the said town of Sutter, and all rights, benefits and privileges under and by virtue of said con-
201 veyance of land and agreements, and all rights, property and interest acquired or to be acquired in and thereto, or in connection therewith, shall be held and controlled, and managed under and according to the provisions of the following articles of association and article 1st:

This association shall be called the Sutter Land Company.

ARTICLE 2D. This company shall proceed to the completion of the improvements at the town of Sutter, as before specified, and manage the same, receive and enjoy the benefits and profits thereof, and in all things conduct the business of said improvements to the best advantage and profit for all parties in interest.

ARTICLE 3RD, SEC. 1ST. The capital stock of said company is fifty thousand dollars, which is hereby divided into five hundred shares of one hundred dollars each, and the beneficial interest therein is hereby declared and promised to be distributed and held as follows, to wit:

SECTION 2D. The said beneficial interest of the said shareholders shall be evidenced by certificates of stock to be signed by the president, and countersigned by the secretary of the company.

202 SECTION 3D. The said stock shall be transferrable only on the books of the company, upon the surrender of the outstanding certificates therefore, and no such transfer shall be good or operative until the person to whom the same is transferred shall become a party to these articles by signing the same.

ARTICLE 4TH, SECTION 1ST. The business of this company shall be transacted by a board of five directors, three of whom shall constitute a qu'rom, for the transaction of business; they shall have power to make contracts, appoint subordinate officers and agents, and remove them at pleasure, to provide for the receipt and disbursements of all moneys, and generally to do all things that may belong to the business of the association which is not otherwise defined, subject only to the limitations herein expressed.

SECTION 2D. The board of directors may, from time to time, call in installments upon the capital stock of the company, not beyond the amount subscribed; no assessment shall be levied except by a vote of all the stockholders.

203 SECTION 2D. At a meeting of the stockholders, held January 2d, 1856, this section was amended so as to read as follows:

The board of directors may from time to time call in installments upon the capital stock of the company, not beyond the amount subscribed unless for the payment of taxes and such other expenditures as are required to protect the property and maintain the organization of this company; no assessment shall be levied except by a vote of all the stockholders.

ARTICLE 5TH. The board of directors shall be composed of the following persons, to wit: Henry Breed, Wm. K. Weston, Robert H. Vance, L. Flagg E. A. Breed, who shall continue the board of directors until others are chosen in their stead. No person can be elected a

director unless he is a stockholder, nor can he hold office as a director after he has ceased to be a stockholder.

SECTION 2D. Vacancies happening in the board of directors
204 may be filled by the board.

ARTICE 6TH, SECTION 1ST. The board of directors shall elect a president of the company from amongst their own members; they shall, also, elect a secretary, treasurer, and agent, and fix their compensation.

SECTION 2D. The president shall preside at all meetings of the board of directors and stockholders, shall have general superintendence of the business of the company, and perform such other duties as the interest of the company require.

SECTION 3D. The secretary shall take charge of and keep all of the books and papers of the company, shall keep an accurate account of the stock, and of the general business of the company, and render reports whenever required by the directors.

SECTION 4TH. The treasurer shall give bonds to the directors, in such sum as the directors may require; he shall receive all monies and
205 keep an accurate account thereof, and shall pay out the same under the orders of the directors, certified to him by the president, and countersigned by the secretary; he shall furnish a statement of the condition of the treasury whenever required.

SECTION 5TH. The duties of the agent shall be prescribed by the board of directors.

ARTICLE 7TH. As often as their are any monies not appropriated in the treasury, and the company is freed from all debt, the board of directors may declare a dividend of the profits to be distributed pro rata amongst the stockholders.

ARTICLE 8TH. Two trustees shall be chosen by the stockholders, to receive and hold in trust for the benefit of the company the property of the company. When sales of property are made of the company the transfer of the same shall be made by them, or in their absence, or other disability, by the president and directors of the company instead.

This article is amended so as to embrace three trustees, two of
206 who may convey the real estate of the company. B. W. MUDGE, *Sec.*

ARTICLE 9TH. The annual meeting of the stockholders for the choice of directors, and the transaction of other business, shall be held on the second Monday in February, at such place as the directors may from year to year determine.

Special meetings of the stockholders may be called at any time by the board of directors, or any five stockholders.

ARTICLE 10. The board of directors may enact such further rules or by-laws for the government of this company as is not inconsistent with these articles.

ARTICLE 11TH. All officers elected by the stockholders shall hold their offices until the next annual meeting in February, 1854.

H. A. Breed	thirty shares
L. Flagg & Co	ten shares
Richard F. Perkins	fifteen shares
Edward A. Beals	ten shares
Urial Huntington	five shares
207 R. G. Sneath	ten shares
Benjamin Sprague	ten shares
S. W. Burke	five shares
Wm. K. Weston	fifteen shares

	Robt. H. Vance	thirty shares
	B. W. Mudge	ten shares
	Wm. Vance & R. H. Vance	ten shares
	Ellis Everette Price	five shares
	Elijah Case	five shares
	Joseph Galloway	ten shares
	W. A. Sampson	five shares
	S. E. Alden	ten shares (10)
	D. L. D. Sheldon	two shares
	Joseph H. Leonard	twelve shares
	George Brown	ten shares
	N. S. Pellett	five shares
	Henry Fay	ten shares
	A. P. Petit	five shares
	Wm. Alden	six shares
	J. P. Wyman	three shares
	Alfred Redington	ten shares
	Joseph B. Leonard	twenty-one shares
	Len Decker	ten shares
	Dan'l L. Breed	thirty-two shares
	Samuel Kenttz	twenty-five shares
	William Muldrew	thirty-six shares
	T. A. Mudge	twenty-four "
	H. A. Breed	nine shares
	N. S. Petit	seven shares
208	Wm. Hart	twenty (20) shares
	H. G. Read	twenty-five "
	N. S. Petit	six shares
	N. S. Petit	six shares
	N. S. Petit	eight shares
	N. S. Petit	twenty-three shares
	S. E. Alden	one share
	N. S. Petit	two shares
	James W. Wilson	four shares
	Lyon Canon	twelve shares
	N. S. Petit	two shares
	William Muldrow	forty shares
	Lyon Canon	four shares
	Cathine Breed	twenty-two shares
	John Agate, by his attorney in fact, William Agate	sixteen shares
	R. H. Vance	sixty shares
	A. F. Brown	twenty-five shares
	Joseph H. Leonard	nineteen shares
	Jas. B. Leonard, per D. H. L	two shares
	R. H. Vance	two shares
	William R. Weston, by his attorney in fact, R. H. Vance	four shares
	Edward C. Cravan	sixteen shares

209 I hereby certify the foregoing to be a true and correct copy of the original articles of agreement of the Sutter Land Company. Witness my hand and seal of said court this, the 28th day of July, A. D. 1859.

[SEAL.]

J. B. DAYTON, *Clk*,
By A. P. HEREFORD, *D. C.*

OFFICE OF THE COUNTY CLERK,
County of Sacramento:

I, Ham. C. Harrison, county clerk of the county of Sacramento, State of California, and ex-officio clerk of the district court of the sixth judicial district, in and for said county and State aforesaid, hereby certify hat I have compared the foregoing copy with the original certified copy of "Articles of association of the Sutter Land Company," filed in my office on the 28th day of July, A. D. 1858, in the case of Petit v. Vance et al., No. 6588, and that the same is a full, true, and correct copy of such original, and of the whole thereof.

210 Attest my hand and seal of said court, this 22nd day of July, A. D. 1874.

[SEAL.] HAM. C. HARRISON,
Clerk.

And thereupon on the 8th day of December, 1858, the said case was submitted to the court for decision. The court found the facts in said case to be as follows, that the defendants were justly indebted to the pl'ff, Pettit, for services rendered and money laid out and expended by pl'ff for the defendants at their request and interest in the sum of $290\frac{72}{100}$. And thereupon on the 18th day of December, 1858, a judgment was duly entered in said action in favor of the said pl'ff, N. S. Pettit, and against all of said defendants, which judgment is in the words and figures following, to wit:

District court, 6th judicial district, December term, A. D. 1858.

STATE OF CALIFORNIA,
City and County of Sacramento:

N. S. PETTIT, PLAINTIFF,
vs.
211 ROBERT H. VANCE, WM. MULDREW, M. Ger. Read, R. G. Sneath, John Agate, Wm. Perkins, D. L. D. Sheldon, J. B. Leonard, Jas. H. Leonard, Wm. Hart, C. C. Breed, S. E. Alden, Wm. K. Weston, Abbott and Dore, Samuel Day, Levi Decker, O. M Alden, J. H. Pennor, M. B. Asken, G. Morris, T. Parden, Geo. Brown, H. S. Bunker, E. E. Cannon, Wm. Vance, N. Huntington, J. P. Wyman, Elijah Case, H. F. Brown, Alfred Reddington, Wm. A. Sampson, Erastus Bartlett, and Josiah Graves, defendants.

Judgment Dec. 18th, A. D. 1858.

Now here at this day the court files findings in this cause, and thereupon orders judgment to be entered in favor of plaintiff for the sum of two hundred and ninety $\frac{72}{100}$ dollars, and costs of suit.

Wherefore it is ordered and adjudged by the court that the plaintiff in this action to have and recover against the defendants herein the
212 sum of two hundred and ninety $\frac{72}{100}$ dollars, with interest on the said sum of $290.72, at the rate of ten per cent. per annum from the date of this judgment until paid, together with his costs of suit on this behalf expended, taxed at

I, J. B. Dayton, clerk of the district court aforesaid, certify the above

and foregoing to be a true copy of the judgment in the above-entitled cause entered of record in my office.

Witness my hand and seal of said court this 18th day of December, A. D. 1858.

[SEAL.]

J. B. DAYTON, *Clerk*,
By HAM C. HARRISON,
Dep. Clerk.

(Endorsed:) Filed Dec. 18th, 1858. J. B. Dayton, clerk, by Ham. C. Harrison, dep. clerk.

And thereupon said Petit sued out his execution upon said judgment in due form, which execution was thereupon delivered to W. S. Manlove, the sheriff of said county of Sacramento, who levied the same upon the following described lots as the same are shown
213 upon said map, to wit, lots Nos. 1 and 5, in block No. 1; lots 3, 5, 7, 9 & 11, in block No. 3; lots 1, 3, 5 and 7, in block No. 4; lots 1, 3, 5 & 7, in block No. 13; lots 1, 3, 5, 7, 9 and 11, in block No. 14; lots 3 and 5, in block No. 15; lot 5, in block No. 16; lots 1, 3 and 5, in block No. 49; lots 1, 3, 4 and 7, in block No. 50; lots 1, 3, 5 and 7, in block No. 51; lots 1, 3, 5 and 7, in block No. 52; lots 1, 3, 5 and 7, in block No. 53; lots 1, 3, 5 & 7, in block No. 54; lots 1, 3, 5 and 7, in block No. 55; lots 1, 3, 5 and 7, in block No. 56; lots 1, 3, 5 and 7, in block No. 57; lots 1, 3, 5 and 7, in block No. 134; lots 3, 5, 7, 9 and 11, in block No. 135; lots 1, 5 & 7, in block No. 136; lots 1, 3, 5 and 7, in block 137; lots 1, 3, 5 and 7, in block No. 138; lots 3, 5 and 7, in block No. 139; lots 5 and 7, in block No. 140; lots 5 and 7, in block No 41; lots 5 and 7, in block No. 142; lots 3, 5 and 7, in block No. 147; lots 1, 5 and 7, in block No. 148; lots 3, 5 & 7, in block No. 150; lots 1, 3, 5 & 7, in block No. 151; lots 3 & 7, in block
214 No. 152; lots 3, 5 and 7, in block No. 160; lots 3, 9 & 11, in block No. 161; lots 1 and 7, in block No. 162; lots 3 and 5, in block No. 163; lots 1, 3, 5 and 7, in block No. 164; lots 3 and 7, in block No. 165; lots 3 and 5, in block 173; lots 1, 5 and 11, in block No. 174; lots 1, 3 and 5, in block No. 175; lots 1, 3, 5 and 7, in block No. 176; lots 1, 3, 5 and 7, in block No. 177; lots 3 and 7, in block No. 178; lots 3 and 7, in block No. 186; lots 6 and 8 and 9 and the west one half 5, in block No. 187; lot 5, in block No. 189; lots 3, 5 & 7, in block No. 190; lots 3 & 7, in block No. 191; and also upon the undivided half of the several lots following, to wit: lots 1, 4, 5 and 8, in block No. 7; lots 8 & 9, in block 161; lots 3 & 4, in fractional block B; and also the undivided two fifths of the several lots following, to wit: lots 5 & 8, in block No. 6; lots 1, 2, 3 & 4, in block No. 10; lots 2 & 3, in block No. 131; lot 4, in block No. 143; lots 2 & 3, in block No. 145; lots 6 & 7, in block No. 183; and also the undivided one fifth of the several lots following, to wit: 1, 2, 3, 4, 6 & 7, in block No.
215 6; lots 5, 6, 7 & 8, in block No. 10; lots 1, 4, 5, 6, 7 & 8, in block No. 131; lots 2, 3, 5, 7 and 8, in block No. 143; lots 1, 4, 5, 7 and 8, in block No. 145; lots 1, 2, 3, 4, 5, 6 and 8, in block No. 169; lots 3, 4, 5 and 8, in block No. 183; and also an undivided one-half of of the several blocks following, to wit, No. 1, 5, 9, 11, 12, 130, 132, 133, 144, 146, 156, 158, 159, 170, 172, 182, 184, 185, fractional block C, and a block bounded by Laurel, Main, Market, and Liberty streets.

And on the 17th day of September, 1859, said sheriff, after legal notice, sold the land as above levied upon and the interest therein above described to G. L. Gibson for the sum of $400.00 on the 21st day of

April, 1862, said sheriff executed and delivered to said Gibson a deed conveying the interest levied upon and sold to him, and on the 8th day of January, 1866, said Gibson conveyed to Ira G. French whatever interest he then had by virtue of said sheriff's deed.

216 That after the filing of said answer, to wit, on the 26th day of July, 1859, Robert H. Vance made and presented to Hon. J. H. McKune, then the judge of the 6th judicial district court, an affidavit in the words following, to wit:

"Robert H. Vance, being duly sworn, says that there is on file in the above-entitled case the original articles of association and by-laws of the 'Sutter Land Company,' and that the defendants desire to withdraw the same for the purpose of settling the affairs of said company, among themselves. He thereupon asks for an order that he may be allowed to withdraw said papers from the files of said case, leaving on file a certified copy of the same."

Whereupon said judge made an order in the following words, to wit:

On the filing of the foregoing affidavit it is ordered that the said defendant be allowed to take from the files of this case of Pettit against Vance and others, the original articles of association and by-laws
217 of the Sutter Land Company, leaving on file a certified copy of the same.

(Signed) J. H. McKUNE,
District Judge.

That said affidavit and order were filed by the clerk of said 6th judicial district court in said case on the 28 day of July, 1859, and thereupon said clerk detached from said answer the document thereto annexed marked Exhibit A and substituted in the place thereof the certified copy which now is annexed to said answer.

XXVII. That on or about the 25th day of August, 1857, said L. W. Hastings and his wife conveyed by deed whatever interest they had in the land in controversy to Lyman H. Hastings, which deed of conveyance was duly acknowledged on the 25th day of September, 1857, and recorded on the 26th day of September, 1857, in the recorder's office.

XXVIII. That on or about the 4th day of December, 1857, said Lyman H. Hastings conveyed by deed whatever interest he had in
218 said land in controversy to Edward Martin, which deed was then duly acknowledged and recorded.

XXIX. That on or about the 6th day of July, 1859, said Edward Martin by deed conveyed whatever interest he had in the land in controversy to R. H. Vance, which deed was then duly acknowledged and delivered.

XXX. That on or about the 1st day of March, 1862, said R. H. Vance by deed conveyed all his right, title, and interest in the land in controversy to Ira G. French, the plaintiff, which deed was then duly acknowledged and recorded.

XXXI. On the 24th day of February, 1865, M. M. Estel, then district attorney of Sacramento County, filed in the office of the clerk of the 6th judicial district in and for Sacramento County, a complaint which, with the several endorsements thereon, is in the words and figures following, to wit:

STATE OF CALIFORNIA,
County of Sacramento:

219 THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
R. H. VANCE DOE, NO. 4774, JOHN DOE, AND Richard Roe, and the real estate and improvements hereinafter described, defendants.

In district court, sixth judicial district.

The people of the State of California, by M. M. Estel, district attorney of the county of Sacramento, complain of Doe No. 4774, John Doe, and Richard Doe, whose real names are to the plaintiff unknown, and who are therefore sued by the fictitious names last aforesaid, and R. H. Vance, and also the following-described real estate and improvements, to wit:

The certain piece or parcel of land situated in said county and State, known and described as a tract of land beginning at the junction of Main street, of the town of Sutterville, and the Sacramento River;
220 thence running easterly 1 mile; thence northerly ½ mile; thence westerly 1 mile, to said river; thence down said river to the place of beginning, in the county of Sacramento, in said State, and all and every part and parcel of the improvements on said land; and for cause of action say that between the first Monday in August, A. D. 1864, in the county of Sacramento, in the State of California, P. R. Beckley, then and there being county assessor of said county, did duly assess and set down upon an assessment roll all the property, real and personal, in said county subject to taxation; that said assessment roll was afterwards submitted to the board of equalization of said county, and was by said board duly equalized as provided by law; that the said R. H. Vance was then and there the owner of, and that there was duly assessed to him the above-described real estate and improvements upon real estate and certain personal property, to wit:

Said real estate valued and so assessed at..... $3,500
221 Said improvements valued and so assessed at..... $
Said personal property valued and so assessed at..... $

And each of the other personal defendants herein have and claim a title to and interest in said real estate, improvements on real estate, and personal property, and are liable for and in duty bound to pay the taxes herein specified; that on said property there has been duly levied for the fiscal year, A. D. 1864—

A State tax of.....	$43 75
A county tax of.....	$70 00
Swamp land district No. 2, tax.....	$
Amounting in the whole to.....	$113 75

All of which is due and unpaid, of which amount $113.75 was duly assessed and levied against the real estate aforesaid, and $ against the improvements aforesaid.

Wherefore, said plaintiffs pray judgment against said persons, defendants herein, for the sum of $113.75, and separate judgment against
222 said real estate and improvements for the sum of $113.75, and that said real estate and improvements be sold to satisfy said separate judgment, and that all the interest and claim of each person

aforesaid, defendants herein, and all persons claiming any interest in said real estate improvements, be forever barred and foreclosed; and that said taxes, and all costs subsequent to the assessment of said taxes, and all costs and expenses of this suit, be paid in gold and silver coin of the United States, and plaintiffs pray such other judgment as to justice belongs.

District Attorney, Sacramento County.

STATE OF CALIFORNIA,
County of Sacramento, ss:

M. M. Estel, being duly sworn, on his oath says that he has read the foregoing complaint and believes it to be true.

M. M. ESTEL,
Dist. Attorney.

Subscribed and sworn to before me this 23rd day of February,
223 A. D. 1865.

A. C. BIDWELL, *Clerk*,
By J. H. PARNELL, *D. C.*

And a tract of land beginning at junction of main street of the town of Sutterville and the Sacramento River; thence running easterly 1 mile; thence northerly ½ mile; thence westerly 1 mile to said river, to the place of beginning.

Assessed value of real estate	$3,500
Improvements	$
Personal property	$
Total	$3,500

Synopsis of tax:

State tax	$43 75
County tax	$76 00
Swamp-land district No. 2	$
	$113 75

STATE OF CALIFORNIA,
City and County of Sacramento, ss:

I hereby certify that the above and foregoing is a correct transcript from the assessment-roll of the year 1864 of the real property, improvements thereon, and personal property assessed to B. H.
224 Vance, and that the State and county taxes therein were levied as appears in detail on said assessment-roll, and that the same is not marked paid upon said assessment-roll.

In witness whereof I have hereunto set my hand and affixed the seal of office, this 20th day of Feb'y, A. D. 1865.

[SEAL.]

JOSIAH HOWEL,
County Auditor.

(Endorsed:) D. C. No. 4601. State and county taxes 1864. No. 4774. The People of the State of California vs. B. H. Vance et al., complainant. Filed February 24th, 1865. A. C. Bidwell, clerk, by S. H. Parnell, D. C. M. M. Estel, district attorney.

The premises described in said complaint includes the premises in dispute.

225 On the 23d day of October, 1865, a decree was entered in said action, in the words and figures following, to wit:

In the district court of the sixth judicial district, State of California, county of Sacramento.

THE PEOPLE OF THE STATE OF CALIFORNIA, plaintiff,
vs.
R. H. VANCE DOE, 4774, JOHN DOE, RICHARD ROE, and the real estate in the county of Sacramento particularly known and described as a tract of land beginning at the junction of main street of the town of Sutterville and the Sacramento River; thence running easterly 1 mile; thence northerly ½ mile; thence westerly 1 mile to said river, thence down said river to the place of beginning, defendants.

226 To recover $113.75, in gold and silver coin of the United States of America, for State and county taxes levied in and delinquent for the fiscal year 1864.

This cause coming on to be heard this 23rd day of October, A. D. 1865, and it appearing to the satisfaction of the court that all owners and claimants of the property above described have been duly summoned to answer the complaint herein, and have made default in that behalf.

And it further appearing to the satisfaction of the court that the court commissioner, to whom the said cause was heretofore referred, has ascertained the amount of taxes due herein and the amount of dues of each officer, and has duly reported by drafting this form of decree, specifying therein, as hereinafter set forth, the amount of said taxes, the amount of attorney's fees, and the gross amount of all other costs, and the court being fully advised in the premises, finds

District att'y's fees..	$17 06
Clerk's fees.....	5 20
Court tax.....	1 14
Sheriff's fees.....	" "
Court com.' costs....	6 00
Witnesses.....	" "
Printing costs.....	7 50
Auditor's fees.....	75

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First. That all the taxes sued for in said complaint are legally levied and assessed.

Second. That all of said taxes are due and unpaid.

Third. That of said taxes the sum of $113.75 was levied and assessed to, on, and against the above mentioned and described real estate.

Fourth. That the taxes due and unpaid amount to the sum of $113.75, and that there is also due thereon 15 per cent., amounting to $17.06, district attorney's fees, and that the gross sum of all other costs amount to $20.59.

Fifth. That of said sum of $113.75 so due and unpaid, the sum of $113.75 is a lien on and against the afore mentioned and described real estate.

Sixth. That each of the personal defendants sued herein, by either his real or a fictitious name, has an interest in and to said property, antagonistic to the lien of plaintiffs.

Seventh. It is therefore ordered, adjudged, and decreed by the

228 court that plaintiffs do have and recover from and against the

said defendants, including said real estate, the sum of one hundred and thirteen $\frac{75}{100}$ ($113.75) dollars in gold and silver coin of the United States of America, together with costs of suit taxed at $37.65, and all accruing costs.

And it is further ordered and decreed that the above-described real estate, or so much thereof as shall be necessary, be sold by the sheriff of said county at a public vendue, in accordance with the statute in such case made and provided, and the proceeds applied to the payment of the judgment and all costs, and the purchaser in due time be let into possession thereof.

(Signed) J. H. McKUNE,
District Judge.

A true copy.
Witness my hand and seal of office this 9th day of Nov'b'r, 1865.
[SEAL.] A. C. BIDWELL, *Clerk*,
By J. H. PARNELL,
Deputy Clerk.

229 And thereupon, on the 9th day of November, 1865, a duly certified copy of said decree as an order of sale was duly issued to the sheriff of said county of Sacramento, in the State of California, upon which the following return was made and filed with said order of sale:

STATE OF CALIFORNIA,
Sacramento County:

SHERIFF'S OFFICE, *Dec. 18th*, 1865.

This certifies that I received the within decree on the 23d day of November, 1865, and after due notice, according to law, I did, on this 18th day of December, 1865, in front of the court-house door, sell to L. M. Lincoln, who was the highest bidder, all of the property within described, for the sum of one hundred and seventy-five and $\frac{42}{100}$ dollars in gold coin.

JAMES McCLATCHY, *Sheriff*,
By JAS. E. SMITH,
Deputy Sheriff.

I received on the within decree, Jan. 27th, 1866, as follows:

Tax		$113 75
	District att'y's fees	17 06
230	Court costs	10 34
	Commissioner's fees	6 00
Printing		7 50
Auditor's fee		75
		$155 40

M. M. ESTEL,
Dist. Att'y,
By A. C. FREEMAN,
Deputy.

(Endorsed:) Tax suit No. 4601, decree No. 3074. First series, in the district court, sixth judicial district. The People of the State of California v. B. H. Vance Doe, 4774. Copy of decree and order of sale. Filed Feb'y 14th, 1866. A. C. Bidwell, clerk, by , D. C. clerk. Accruing costs, $4.00.

And on the 18th day of December, 1865, the following certificate of sale was made and delivered to the defendant, L. M. Lincoln:

Certificate of purchase.

THE PEOPLE OF THE STATE OF CALIFORNIA *vs.* R. H. VANCE DOE, 4774, JOHN DOE, RICH'D Roe.

231 District court, sixth judicial district, held in and for the county of Sacramento, State of California.

I, James McClatchy, sheriff of the county of Sacramento, State of California, do, as such sheriff, certify, that by virtue of a judgment and decree of sale for State and county taxes levied for the fiscal year 1864, rendered and docketed in the district court of the sixth judicial district of said State held in and for the county of Sacramento, on the 23d day of October, 1865, in favor of the people of the State of California, and against R. H. Vance Doe 4774, John Doe, Rich'd Roe, and the piece or parcel of land known and described as a tract of land beginning at the junction of Main street, of the town of Sutterville, and the Sacramento River, thence running easterly 1 mile, thence northerly ½ mile, thence westerly 1 mile to said river, thence down said river to the place of beginning; which said judgment is against said real estate for the sum of one hundred
232 and thirteen $\frac{75}{100}$ dollars, together with $41.65 costs at my reception of the process and all accruing costs, the whole payable in gold coin by me received on the 23d day of November, 1865, commanding me to levy upon the above mentioned and described property, and to cause so much thereof as was necessary to be sold to the purchaser who would take the smallest quantity thereof and pay the judgment and all costs, I did on the 23rd day of Nov'ber, 1865, levy upon the said property, and after due notice according to law, I have this day sold at public auction in front of the court-house door of said county, at the hour of eleven o'clock a. m., for the sum of one hundred and seventy-five $\frac{42}{100}$ dollars in gold coin, to L. M. Lincoln, all of the above-described property. And said sum of one hundred and seventy-five $\frac{42}{100}$ dollars has been paid to me in gold coin by said L. M. Lincoln, and is the whole consideration by him paid for the last mentioned and described
233 property, and entitles him to this certificate of purchase, which said purchase will become absolute at the expiration of six months, and the purchaser then be entitled to a conveyance unless the property is redeemed according to law.

Given under my hand as sheriff as aforesaid, at office in the city of Sacramento, this 18th day of December, 1865.

JAMES McCLATCHY,
Sheriff of the County of Sacramento.
By J. R. DRAY,
Deputy Sheriff.

And the time for redemption having expired, and no redemption having been made of said land from said sale, said sheriff, James McClatchy, made and delivered an instrument to said L. M. Lincoln, in the following words and figures, to wit:

To all whom these presents may come, I, James McClatchy, ex-sheriff of the county of Sacramento, send greeting:

Whereas by a decree and order of sale to me directed issued
234 out of the clerk's office of the district court of said judicial dis-

trict of the State of California, in and for the county of Sacramento, upon a judgment recovered in said court on the 23d day of October, A. D. 1865, in favor of the people of the State of California, and against R. H. Vance Doe, 4774, and that piece or parcel of land situated in the county of Sacramento, State of California, and described as a tract of land beginning at the junction of Main street, of the town of Sutterville and the Sacramento River, thence running easterly one mile, thence northerly half a mile, thence westerly one mile to said river, thence down said river to the place of beginning, for the sum of one hundred and thirteen $\frac{75}{100}$ dollars for State and county taxes levied for the year 1864, and $41.65 costs of suit and accruing costs, and by me received on the 23rd of November, 1865, I was commanded to sell so much of the real estate hereinbefore described as should be
235 necessary to pay said sums, as by the said decree and order of sale, reference thereto being had, will more fully appear.

And whereas, after receipt of said decree and order of sale by me, and before the day of return thereof, I did, by virtue of the said decree and order of sale, give the legal notice of the time and place of such sale according to the statute in such case made and provided, and upon the day of such sale, to wit, the 18th day of December, 1865, did sell the land hereinafter more particularly described to L. M. Lincoln for the sum of one hundred and seventy-five $\frac{42}{100}$ dollars, he being the highest bidder and that being the largest sum bid for said property at such sale;

And whereas six months have elapsed since the date of such sale, and the time for redemption having fully expired, and no person has redeemed said premises, or any portion thereof:

Now, therefore, know ye that I, James McClatchy, the ex-
236 sheriff aforesaid, by virtue of the hereinbefore-mentioned decree and order of sale, and of the statute in such case made and provided, and in consideration of the aforesaid sum of one hundred and seventy-five $\frac{42}{100}$ dollars to me in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell to said L. M. Lincoln, heirs and assigns, forever, all that piece or parcel of land lying and being in the county of Sacramento and State of California, and known and described as a tract of land beginning at the junction of Main street, of the town of Sutterville, and the Sacramento River; thence running easterly one mile; thence northerly half a mile; thence westerly one mile, to the said river; thence down said river to the place of beginning, together with the appurtenances: To have and to hold the said land and premises and every part and parcel thereof, with the appurtenances,
237 unto the said L. M. Lincoln, heirs and assigns, forever, as fully and as absolutely *and* the said James McClatchy as ex-sheriff aforesaid and under the authority aforesaid might, could, or ought to convey and sell the same.

In witness whereof I, James McClatchy, have, as ex-sheriff, hereunto set my hand and seal the 21st day of June, 1866.

JAMES McCLATCHY, [SEAL.]
Sheriff of the County of Sacramento.

[Revenue stamp, 50 cts., cancell'd.]

Said deed, so made by said ex-sheriff, was duly acknowledged and recorded on the 21st day of June, 1866, in the recorder's office of said county.

Afterwards, on the 11th day of June, A. D. 1872, and after said James

McClatchy had ceased to be sheriff of said county of Sacramento, said district court of the 6th judicial district in and for said Sacramento County, upon ex-parte application therefor, entered an order in said case, which order is as follows, to wit:

238 In the district court of the sixth judicial district in and for the county of Sacramento, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, plaintiff,
vs.
R. H. VANCE DOE, 4744, ET AL., DEFENDANTS.

On this day comes in court James McClatchy, ex-sheriff of the county of Sacramento, and files his affidavit herein, and asks leave to make and file an amended return of the sale by him made of the lands described in the decree of sale herein. And after due consideration of said affidavit and of all and singular the matters relating to same, and the premises herein, the court finds all the matters in said affidavit contained to be true.

It is ordered, adjudged, and decreed by the court that said James McClatchy have leave, and leave is hereby given to him, to amend his return of the sale of the lands in the decree herein authorized and
239 directed to be sold, and that he so amend his return of said sale as to state the facts, and that he inserts in his return of said sale the fact that he first offered for sale the smallest quantity of said land which any person would take and pay the sum of money in the decree mentioned, including all costs of the action, and that no person would take a less amount than the whole of said lands and pay said tax; that thereafter L. M. Lincoln bid for all of said lands the sum of $175 $\frac{42}{100}$ gold coin; that said sum was sufficient to pay the money in said decree mentioned, including all costs; and that being the best bid offered, the said real estate was then and there, by said McClatchy, as such sheriff, struck off and sold to said Lincoln, and said sum so bid by him was then paid to and received by said McClatchy.

LEWIS RAMAGE,
District Judge.

And said McClatchy, said ex-sheriff, did amend his return in
240 pursuance of said order of said court on the 11th day of June, 1872, by an endorsement on said order of sale in the words following, to wit:

STATE OF CALIFORNIA,
County of Sacramento, ss:

This certifies that I received the decree No. 3074 in above entitled action, on the 23rd day of November, 1865, and after having given due notice in manner as required by law by virtue thereof, and by authority of law, I did, on the 18th day of December, A. D. 1865, offer for sale the lands in the decree described, by first offering the smallest quantity thereof which any purchaser or person would take and pay the money mentioned in the said decree, and all costs; but no person offered to take less than the whole of said land and pay said amount of money; and thereupon L. M. Lincoln bid for all of said land the sum of one hundred and seventy-five $\frac{42}{100}$ dollars gold coin, which sum being sufficient to pay said money, and all costs in said decree mentioned, and all

241 expenses of sale, and he being the highest and best bidder, I then and there sold all of said land in said decree described to the said L. M. Lincoln, and then and there received from him the purchase money, to wit, $175.42 gold coin.

JAMES McCLATCHY.

JUNE 11, A. D. 1872.

And afterwards, on the 11th day of June, 1872, said McClatchy made and delivered to said L. M. Lincoln a deed, in the words and figures following, to wit:

To all to whom these present' may come:

I, James McClatchy, ex-sheriff of the county of Sacramento, send greeting:

Whereas, by a decree and order of sale to me directed, issued out of the clerk's office of the district court of the sixth judicial district of the State of California in and for the county of Sacramento, upon a judgment recovered in said court on the 23rd day of October, A. D. 1865, in favor of the people of the State of California, and against R. H.
242 Vance Doe, 4774, et als., and that piece or parcel of land situate in the county of Sacramento, and State of California, and described as a tract of land beginning at the junction of Main street, of the town of Sutter, and the Sacramento River; thence running easterly one mile; thence northerly half a mile; thence westerly one mile to said river; thence down said river to the place of beginning, being the north half of the town of Sutterville, for the sum of one hundred and thirteen $\frac{75}{100}$ dollars, for State and county taxes levied for the year 1864, and $41\frac{85}{100}$ costs of suit and accruing costs, and by me received on the 23d day of November, 1865, I was commanded to sell so much of the real estate hereinbefore described as should be necessary to pay said sums as by the said decree and order of sale, reference thereto being had, will more fully appear.

And whereas, after the receipt of the said decree and order of sale by me, and before the day of the return thereof, I did, by virtue of the said decree and order of sale, give legal notice of the time and place
243 of such sale according to the statute in such case made and provided, and upon the day of such sale, to wit, the 18th day of December, 1865, did sell the land hereinafter more particularly described to L. M. Lincoln for the sum of one hundred and seventy-five $\frac{42}{100}$ dollars, that being the amount of said judgment and costs, and the best bidder therefor, and said land so sold being the smallest quantity that any purchaser offered to take and pay such judgment and costs; and whereas six months has elapsed since the date of such sale, and the time for redemption having fully expired, and no person has redeemed said premises or any part thereof:

Now, therefore, know ye, that I, James McClatchy, the ex-sheriff aforesaid, by virtue of the hereinbefore mentioned decree and order of sale, and of the statute in such case made and provided, and in consideration of the aforesaid sum of one hundred and seventy-five
244 $\frac{42}{100}$ dollars, to me in hand paid by the said L. M. Lincoln, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said L. M. Lincoln, his heirs and assigns forever, all that piece or parcel of land lying and being in the county of Sacramento and State of California, and known and described as a tract of land beginning at the junction of Main street of the town of Sutterville and the Sacramento

River, thence running easterly one mile; thence northerly half a mile, thence westerly one mile to the said river; thence down said river to the place of beginning, being the north half of the town of Sutterville, together with the appurtenances.

To have and to hold the said land and premises, and every part and parcel thereof, with the appurtenances, unto the said L. M. Lincoln, his heirs and assigns forever, as fully and as absolutely as I the said James McClatchy, as ex-sheriff aforesaid, and under the authority afore-
245 said, might, could, or ought to convey and sell the same.

In witness whereof I, James McClatchy, have, as such ex-sheriff, hereunto set my hand and seal the 11th day of June, 1872.

JAMES McCLATCHY, [SEAL.]
Ex-Sheriff of the County of Sacramento.

The said deed was then duly acknowledged and recorded in the office of the county recorder of said county.

XXXII. That on the 1st day of March, 1862, at the time R. H. Vance made the deed to Ira G. French, the plaintiff mentioned in the finding, said Ira G. French made and delivered to said B. H. Vance the following instrument in writing, to wit:

Ira G. French to and with Robt. H. Vance.

Articles of agreement made and entered into this 1st day of March, one thousand eight hundred and sixty-two, between Ira G. French of the one part, and Robt. H. Vance of the other part, both of Sacramento, State of California, as follows:

246 R. H. Vance having this first day of March, 1862, made and executed to Ira G. French a deed to all lands belonging to the said Vance in Sacramento County, State of California, for description of which reference is made to deed recorded the 1st day of March, 1862, in the recorder's office in Sacramento County, it is understood and agreed to between the said parties that the said land was deeded by the said Vance to the said French as security for the payment of a note of eighteen thousand two hundred and forty-one and $\frac{82}{100}$ dollars, dated February 1st, 1862. It is further understood that the said French agrees to endorse on said note from time to time all moneys received by him for sales made of any of said land. And it is further agreed that as soon as the said note is paid, either from the sales of said land or in any other way, so that said French receives the amount of said note and interest, he binds himself, his heirs, executors, administrators,
247 to re-deed to said Vance all the lands first deeded to said French by deed of March 1st, 1862, excepting such lands as may have been sold by said French, and the proceeds of said sales applied on the said Vance note.

Signed, sealed, the day and year above written.

IRA G. FRENCH.

And on or about the 27th day of September, 1867, said Ira G. French made and delivered to said R. H. Vance his deed, whereby he, said French, did remise, release, and quit claim unto said Vance, all his right, title, and interest in and to the land described in said agreement, which is the land described in the complaint herein, and in the deed from said Vance to said French, of date March 1st, 1862.

That on the 4th day of November, 1867, said Robert H. Vance, the

successor in interest of said plaintiff in and to the land in controversy, commenced his action in the district court of the 6th judicial dis-
248 trict, in and for the county of Sacramento, and State of California, against said defendants, L. M. Lincoln, W. W. Crouse, Richard Sherburn, Thomas Edwards (now deceased, and represented herein by the administratrix of his estate), Jefferson Lake, L. Hoyt, Samuel Onesto, Antone De Silva, and others.

That on the 18th day of April, 1868, said action having been tried by the court without a jury, a judgment was duly entered therein; the judgment roll in said action is in the words and figures following, to wit:

In the district court of the sixth judicial district of the State of California, in and for the county of Sacramento.

ROBERT H. VANCE, PLAINTIFF,
vs.
L. M. LINCOLN, J. LAKE, A. G. SILVA, CARLO D. Vaeh, Siprianna Perra, J. Adams, T. Edwards, H. B. Gales, W. W. Crouse, R. Sherburn, Mrs. C. Hastings, T. Davis, J. W.
249 Tilden, Samuel Onesta, G. Onesta, G. Paskene, J. Paskene, A. Carothers, J. Cook, Mr. S. Hall, F. Windrick, L. Hoyt, defendants.

The plaintiff, Robert H. Vance, by S. L. Rogers, his attorney, complains of the above-named defendants, and for cause of action avers, that on the 27th day of September, 1867, he, the said plaintiff, was the owner in fee simple, and was seized in his own right in fee simple absolute, and was then, and still is, as such owner entitled to the possession of the following described tract and parcel of land, situated in town of Sutter, county of Sacramento, and State of California, bounded on the north, east, and south, by lands formerly granted by the Mexican Government to one John A. Sutter, and on the west by the Sacramento River, commencing at the corner of Main and Water streets of
250 said town of Sutter, at the east bank of said Sacramento River, running thence in a northerly direction up and along said river one-half of a mile; thence in an easterly direction one mile; thence southerly, at right angles, one-half mile; and thence westerly, at right angles, one mile, to the place of beginning, being one-half of the original surveyed town of Sutterville, formerly so called, now called Sutter, and being the same tract of land conveyed by said John A. Sutter to one L. W. Hastings, on the 30th of November, 1849, said premises being a part of the land granted to the said John A. Sutter, under the name of "New Helvetia," and containing 320 acres.

And the plaintiff says, that being so seized of the said premises as aforesaid, the said defendants afterwards, to wit, on the said twenty-seventh day of September, 1867, unlawfully entered into and upon said premises, and they have ever since, and do now, unlawfully with-
251 hold from the plaintiff the possession thereof, to his damage twenty thousand dollars.

And the plaintiff further says that the value of the use and occupation of said premises since said twenty-seventh day of September, 1867, is the sum of twenty thousand dollars.

Wherefore said plaintiff prays that he may recover possession of said

lands, and have judgment for the restitution of said land and premises, and that he may recover the sum of twenty thousand dollars as damages for withholding the same from him, as aforesaid, and for the rents and profits thereof, besides costs.

S. L. ROGERS,
Attorney for Plaintiff.

(Indorsed:) Filed November 4th, 1867. E. D. Shirland, clerk by J. H. Parnell, D. C.

252 *Answer of R. M. Lincoln et al.*

In the district court of the sixth judicial district of the State of California, in and for the county of Sacramento.

ROBERT H. VANCE, PL'FF,
vs.
L. M. LINCOLN, J. LAKE, A. G. SILVA, & others, defendants.

The defendants, L. M. Lincoln, J. Lake, A. G. Silva, T. Edwards, W. W. Crouse, R. Sherburne, Samuel Onesta, A. Carothers, L. Hoyt, and G. Onesta, for answer to the plaintiff's complaint, deny that on the 27th day of September, 1867, or at any time since, said plaintiff was, or that he now is, seized or possessed of any estate, either in fee simple or otherwise, in the demanded premises, or at said date, or at any time prior or subsequent thereto, possessed or entitled to the possession of said
253 premises. Said defendants further deny that on said 27th day of September, or at any other time, they or either of them unlawfully entered upon said premises, or any part thereof, or that they have unlawfully at any time withheld, or do now unlawfully withhold said premises, or any part thereof, from the plaintiff. They deny that the plaintiff has suffered damage in the sum of twenty thousand dollars, or in any other sum, from or by any unlawful act or acts of the defendants, or either of them. They further deny that the value of the said use and occupation since said twenty-seventh day of September, 1867, is the sum of $20,000 or any sum whatever.

For a further answer they deny each and every material allegation in the plaintiff's complaint.

The defendants, further answering, aver that they now are, and for a long time past have been, in possession of the demanded premises as owners thereof in fee simple.

254 For a further and separate answer to said complaint, these defendants allege that on the 8th day of November, 1866, one Ira G. French commenced a suit in the circuit court of the United States, in and for the northern district of California, claiming the premises demanded in this suit, and the possession thereof, as owner in fee simple. That these defendants, with others, were defendants in that suit, and denied the ownership, title, and right of possession of said plaintiff, and set up and claimed title in themselves as owners in fee simple; that the right and title of the plaintiff, and of these defendants in said suit to the demanded premises, so in controversy, and their respective rights and claim to the possession thereof, as owners or otherwise, were duly put in issue by the pleadings, and were fully litigated, tried, and determined in said suit; that after a full trial, it was finally adjudged by the court that the said French had no right, title, or claim to said

255 premises, or to the possession thereof; that thereupon final judgment was entered in said suit in favor of these deparments, which judgment is still in full force and effect; that the interest of said Ira G. French has been transferred to said Vance (this plaintiff) since the final judgment aforesaid, and that said Vance has no other right, title, or claim to said premises, or to the possession thereof, than that which was so transferred to him by said French, and was tried and determined in manner aforesaid, and the matters so adjudged and determined ought not to be again brought in question.

Wherefore said defendants pray the judgment of the court and for their costs.

THOMPSON CAMPBELL, &
MOORE & ALEXANDER,
Def'ts' Att'ys.

(Indorsed:) Filed December 24th, 1867. E. D. Shirland, clerk. By J. H. Parnell, dep. clerk.

256 *Findings of the court.*

In district court, 6th judicial district.

STATE OF CALIFORNIA,
County of Sacramento:

ROBERT H. VANCE, PLAINTIFF,
vs.
L. M. LINCOLN ET AL., DEFENDANTS.

This action came on regularly for trial; the parties appeared by their respective attorneys, and agreed in open court to waive a trial by jury, and to try said action before the court without a jury, which agreement was entered in the minutes of the court. Whereupon the defendants' counsel moved that the plea in bar to said action interposed by the defendants, L. M. Lincoln, Jefferson Lake, A. G. Silva, T. Edwards, W. W. Crouse, R. Sherburne, Samuel Onesta, A. Carothers, and L. Hoyt, be first taken up and considered by the court, and, plaintiff's counsel making no objection, it was ordered.

Whereupon the respective parties introduced their evidence,
257 and made their proofs, from which the court finds the following facts:

First. That, on the 8th day of November, 1866, one Ira G. French commenced an action in the circuit court of the United States for the district of California against said defendants to recover the possession of the same lands described in the complaint in this action; that a plea to the jurisdiction of said circuit court in abatement of the said action was interposed by said defendants, and replied to by the plaintiff therein, which said plea and replication are in words as follows, to wit:

Plea in abatement.

In the circuit court of the United States in the State of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET AL.

Thomas Edwards, L. M. Lincoln, A. Carothers, W. T. Caroth-
258 ers (sued as W. Carothers), J. T. Carothers (sued as T. Carothers),

W. W. Crouse, L. Hoyt, R. Sherburn, J. Lake, G. A. Cook, Antone E. De Silva, Samuel O. Ness, and Sarah Hall, impleaded with the other defendants named in said complaint came in their proper persons, and for answer say, on information and belief, that the plaintiff has no interest in the said cause, nor in the premises in controversy, nor had he at the time of the commencement of this suit, but claimed title to premises solely under and by virtue of a conveyance made to him by one R. H. Vance, who, at the time of making said conveyance, and at the time of commencing this suit, was a citizen of the State of California, and who is the real party in this suit, and that the plaintiff named in this complaint is merely nominal and colorable, and that the suit herein is a controversy between the said Vance and these defendants; all of whom were, at the time this suit was commenced, citizens of the State of California.

And the said defendants further say, on information and belief,
259 that said conveyance from said Vance to the said plaintiff was merely colorable and without consideration, and that said suit was brought for the purpose of committing a fraud upon the jurisdiction of said court.

And this the said defendants are ready to verify.

Whereupo they pray whether this court can or will take cognizance of the action aforesaid.

THOMPSON CAMPBELL,
Att'y for Def'ts.

DEC. 24, 1866.

Plea.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

L. M. Lincoln, one of the above-named defendants, being duly sworn, on his oath says, that he verily believes the foregoing plea to be true in substance and in fact; and he further deposes that the statements therein contained are true, of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

260 L. M. LINCOLN.

Sworn and subscribed before me the 24th day of Dec., A. D. 1866.

J. H. BLOOD,
Notary Public.

(Endorsed:) Filed Dec. 24, 1866. G. C. Gorham, cl'k. By S. Neal, D. C.

Reply to plea in abatement.

In the circuit court of the United States for the district of California.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

And now comes the said plaintiff, and replying to the preliminary answer of the defendants, Thomas Edwards, L. M. Lincoln, A. Carothers, J. T. Carothers, W. W. Crouse, W. T. Carothers, L. Hoyt, R.

Sherburn, J. Lake, G. A. Cook and Sarah Hall, impleaded, etc.,
261 says that his complaint ought not to be set aside, nor the action dismissed for anything in said answer contained, because he says that at the time of the commencement of this action, he, the said plaintiff, was, and is now, seized in fee of the said premises and entitled to the possession thereof. And that the conveyance mentioned in said answer, made by R. H. Vance, was made in good faith and for a valuable consideration; and the plaintiff is not, as therein alleged, merely a nominal party, but is the real party in interest in this suit, and the controversy herein is between this plaintiff and the said defendants; and that this suit was not brought, as alleged in said answer, for the purpose of committing a fraud upon the jurisdiction of the court, but with the bona fide purposes and intent to have the just rights of the plaintiff determined by this court, which has jurisdiction in the premises. And this plaintiff further says that said conveyance was and is made and held by this plaintiff in trust to hold and possess the said lands, and sell and dispose of the same and
262 apply the proceeds thereof—first to the payment of a large amount of indebtedness due from said Vance to this plaintiff, and then pay to the said Vance any balance that may remain after paying such indebtedness.

And the plaintiff further says, on information and belief, that the said R. H. Vance was at the time of the commencement of this action, and is now, a citizen of the State of New York, and has not since the commencement of this suit been a citizen of this State.

And this the said plaintiff prays may be inquired of by the country, &c., and that this court may take full cognizance of this action.

S. F. AND J. REYNOLDS,
Plaintiff's Attorneys.

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

John Reynolds, one of the attorneys for the plaintiff in the above-entitled action, being duly sworn, says that he is the attorney-in-fact, as well as one of the attorneys as law for the plaintiff in contro-
263 versy in this action. That the said plaintiff as deponent is informed and believes now resides in the State of New York, and is not now in this State. Deponent further says, that he has read the foregoing reply to the preliminary answer of the defendants, and knows the contents thereof, and that the same is true of his own knowledge, except the matters which are therein stated on his information and belief, and as to those he believes it to be true.

JOHN REYNOLDS.

Sworn before me, February 7th, 1867.

JOHN WHITE,
Notary Public.

(Endorsed:) Filed Feb'y 8, 1867. G. C. Gorham, cl'k, per John O. Wheeler, D. C.

And the same was duly tried by said court without a jury, a jury trial being waived, and parties having introduced their evidence and proofs, the said plea was overruled by the court, and the findings and judgment of said court thereon are in words and figures as follows, to wit:

264 *Findings of the court.*

Circuit court U. S., district of California. February term, 1867.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

Action at bar to recover possession of real property.

In pursuance of the stipulation of the plaintiff in the above-entitled action and certain of the defendants therein who plead in abatement to the jurisdiction of the court by which it is agreed that the issue of fact, arising upon said plea in abatement, and the replication thereto, may be tried by the court without the intervention of a jury, the court now finds the following facts—

First. That on the first day of March, 1862, one R. H. Vance, by deed of bargain, sale duly executed and delivered, conveyed to the plaintiff herein the premises in the complaint mentioned, and such conveyance was made as aforesaid, in payment of a debt then due from the
265 said Vance to the said plaintiff, and upon no other consideration.

Second. That at the time of the execution and delivery of the conveyance aforesaid, an agreement in writing was executed between the grantor and grantee in such conveyance, whereby it was agreed that said grantor should have the right to repurchase from the grantee the premises in question, upon paying to the latter the amount of the consideration upon which such conveyance was made.

Third. That at the date of the execution aforesaid, both the plaintiff and said Vance were residents and citizens of the State of California, and that in the year 1863 the said plaintiff removed to the State of New York, where he has ever since continued to reside, and that at the date of the commencement of this action, namely, November 8th, 1866, the said plaintiff was a citizen of the State of New York.

Fourth. That the conveyance aforesaid, so executed and accepted as aforesaid, was a real transaction and not a fictitious one; and that the same was intended by the parties thereto to vest in the plaintiff
266 herein, in payment of the debt aforesaid, the estate of said Vance in the premises in question, subject to the condition of the right of repurchase by the grantor as aforesaid.

Conclusions of law.

And from the premises aforesaid, as a conclusion of law, the court now finds that at the time of the commencement of this action, the plaintiff was entitled to bring the same in this court, and that this court has jurisdiction to try and determine the same.

DEADY, *J.*

(Endorsed:) Filed March 5th, 1867. G. C. Gorham, clerk, per John O. Wheeler, D. C.

And that afterwards several answers were filed by the defendants therein, and a trial of the issues then made therein was had in said circuit court, and verdict rendered therein for all the defendants, and afterwards on the 26th day of April, 1867, a judgment was duly
267 entered therein in favor of the defendants therein named.

And the judgment roll in said action is in words and figures as follows, to wit:

In the circuit court of the United States in and for the northern district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS, L. LINCOLN, L. HOYT, W. W. Crouse, Huntoon Crowell, Mrs. Buckmaster, Mrs. S. Hall, Mrs. E. Lake, E. Paine, A. Carothers, T. Carothers, Wm. Carothers, D. E. Hastings, R. Sherburn, F. Davis, W. Tilden, H. B. Gales, Cook, J. Lake, F. Windrick, Antone , Joseph , Dowell Mount, John Doe, Richard Roe, Jones Jackson, Peter White, John Brown, John Chutt, and John Roe, defendants.

The plaintiff, Ira G. French, a citizen and resident of the State
268 of New York, by S. F. and J. Reynolds, his attorneys, complains of the above named defendants, all citizens of the State of California aforesaid, and for cause of action avers that on the first day of March, 1862, he, the said plaintiff, was the owner in fee-simple and was seized in his own right in fee-simple absolute, and was then and still is, as such owner, entitled to the possession of the following described tract and parcel of land, situated in the town of Sutter, county of Sacramento, and State of California, bounded on the northeast and north by lands formerly granted by the Mexican Government to one John A. Sutter, and on the west by the Sacramento River; commencing at the corner of Main and Water streets in said town of Sutter at the east bank of said Sacramento River, running thence in a northerly direction up and along said river, one-half of a mile; thence in an easterly direction, one mile; thence southerly, at right-angles, one-half mile; thence westerly, at right-angles, one mile, to the place of beginning;
being one-half mile of the original surveyed town of Sutterville,
269 formerly so-called, now called Sutter, and being the same tract of land conveyed by John A. Sutter to one L. W. Hastings, on the 30th of November, 1849, said premises being a part of the land granted to the said John A. Sutter under the name of New Helvetia, and containing 320 acres.

And the plaintiff further says that, being so seized of the said premises as aforesaid, the said defendants afterwards, to wit, on the said first day of March, 1862, unlawfully entered into and upon said premises, and they have ever since and do now unlawfully withhold from the plaintiff the possession thereof to his damage twenty thousand dollars.

And the plaintiff further says that he is a citizen of the State of New York, and resides in said State, and that the defendants are all citizens of the State of California. The plaintiff further says that the Christian names of Huntoon, Crowell, Cook, and Mrs. Buckmaster are unknown
to him, as also the full names of the defendants Antone and
270 Joseph, and that the names John Doe, Richard Roe, James Jackson, Peter White, John Brown, John Smith, and John Roe are fictitious names, representing defendants whose real names are unknown to the plaintiff, and the plaintiff prays that the real names of all the defendants may be inserted when ascertained; and the plaintiff fur-

ther says that the value of the use and occupation of said premises since said first day of March, 1862, is the sum of twenty thousand dollars.

Wherefore said plaintiff prays that he may recover possession of said land and premises, and that he may recover the sum of twenty thousand dollars as damages for withholding the same from him as aforesaid, and for the rents and profits thereof, besides costs.

S. F. AND J. REYNOLDS,
Att'ys for Plaintiff.

(Endorsed:) Filed November 8, 1866. Geo. C. Gorham, clerk, by S. Neall, D. C.

271 UNITED STATES OF AMERICA:

In the circuit court of the United States in and for the northern district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS ET AL., DEFENDANTS.

Action brought in the circuit court and the complaint filed in the city and county of San Francisco in the office of the clerk of said circuit court.

The President of the United States of America, greeting:

To Thomas Edwards, L. Lincoln, L. Hoyt, W. W. Crouse, Huntoon, Crowell, Mrs. Buckmaster, Mrs. S. Hall, Mrs. E. Lake, E. Paine, A. Carothers, T. Carothers, Wm. Carothers, D. E. Hastings, R. Sherburne, F. Davis, W. Tilden, H. B. Gales, Cook, F. Windrick, Antone, Joseph , David Morrill, John Doe, Richard Roe, James Jackson, Peter White, John Brown, John Smith, and John Roe.

272 You are hereby required to appear in action brought against you by the above-named plaintiff in the circuit court of the United States for the northern district of California, and to file your plea, answer, or demurrer to the complaint filed therein (a copy of which accompanies this summons) in the office of the clerk of said court in the city and county of San Francisco, within ten days (exclusive of Sundays and day of service) after the service on you of this summons, if served on you in this county, or if served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to recover the possession of 320 acres of land in the town of Sutter, of county of Sacramento and State of California, part of the land granted to John A. Sutter by the name of "New Helvetia," and $20,000 damages for withholding the same and for the rents and profits, besides costs.

273 And if you fail to appear and plead answer or demurrer as herein required, judgment by default will be entered against you and each of you.

Witness the honorable Solomon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 8th day of November, in the year of our Lord one thousand eight hundred and sixty-six, and of our Independence the 19st.

Attest:

GEORGE C. GORHAM, *Clerk*,
By S. NEALL, *D. C.*

[Endorsement.]

U. S. MARSHALL'S OFFICE.
District of California.

I hereby certify that on the 10th day of November, A. D. 1866, I received the within summons, and on the 13th day of November, A. D. 1866, personally served the same by delivering to W. W. Crouse, Jefferson Lake, Frank Davis, Edward Paine, Frank Hoyt, J. W. Tilden as Mr. Tilden, L. Lincoln, Antone Ruffe as Antone, J. Crowell as Crowell, Charles Devato as John Doe, A. Baskene as David Morrel, W.
274 Carothers, D. E. Hastings, R. Sherburne, Mrs. E. Lake, Mrs. Buckmaster, John Abbot as Cook, Thos. Edwards, Thos. Carothers, Mrs. S. Hall as Mrs. S. Hall, H. B. Gales, Huntoon, F. Windrick, Chepa Peine as Richard Roe, John Onesta as James Jackson, Aeota Alta as John Brown, Samuel Anss, John Smith, and A. Carothers, said defendants, personally, in the county of Sacramento, a copy of said summons attached to a certified copy of the complaint.

San Francisco, March 2d, 1867.

CHARLES W. RAND,
U. S. Marshal,
By A. C. TAYLOR, *Deputy.*

In the district court of the United States in and for the district of California.

IRA G. FRENCH
vs.
THOMAS EDWARDS, IMPLEADED WITH JEFFERSON LAKE, et al.

275 Thomas Edwards, one of the defendants in the above-entitled cause, impleaded with Jefferson Lake and the other defendants, comes by his attorney, Thompson Campbell, and for his separate answer to the complaint in the above-entitled action, says that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint, and he denies each and every allegation of said complaint.

And for a further and separate defense, says that at the time of the suing out of this writ in this action and before that time, to wit, on the first day of March, A. D. 1862, the defendant was and ever since has been and now is seized as owner in fee simple and entitled to the possession of the following described parcels of lots of ground, being a part of the premises described in the plaintiff's complaint, and which is bounded and described as follows: Lot number ten, on the map or
276 plan of the town of Sutter, drawn by C. W. Booth, July 1st, 1850, being a certain original lot of 80 by 160 feet, and he avers that he does not occupy any other part or parcel of the premises described in said plaintiff's complaint.

For a further claim to the alleged cause of action for damages for the value and occupation of said premises, the said defendant alleges that at the time of the commencement of the action he was holding the premises so described and occupied by him as aforesaid under color of title in good faith and adversely to the claims of the said plaintiff, and that while so holding said premises he made permanent and valuable improvements on the same, to wit, of the value of five hundred dollars, which said amount the defendant claims to recover by way of counter claim of

284 In the circuit court of the United States in and for the northern district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
SAMUEL ONESTA (WHO IS SUED BY THE NAME of James Jackson), impleaded with Thomas Edwards, L. Lincoln, and others.

And now comes the said defendant (who is sued by the name of James Jackson), and for his separate answer to the complaint of said plaintiff in said cause answers as follows, to wit: He denies each and every allegation in the complaint contained.

And for a further and other answer to said complaint this defendant denies that the said Ira G. French is a citizen or resident of the State of New York, or was a citizen or resident of the State of New York at the time of the commencement of this suit, and he denies that the
285 said defendants are all citizens of the State of California at the time of the commencement of this suit. This defendant denies that he is a citizen of the State of California. He denies that on the first day of March, 1862 (or at any time), he, the said plaintiff, was the owner in fee simple or the owner in any manner whatever, or that he was seized in his own right or the right of any person in fee simple absolute or in any manner or degree whatsoever, or was then or still is as such (supposed) owner entitled to the possession of the lands described in said complaint, or any part of said lands.

And this defendant denies that the said defendants, or either or any of them, afterwards, to wit, on the first day of March, 1862, or ever, at any time, unlawfully or otherwise, entered into or upon said premises, or any part thereof, or have ever since (or at any time), or do now unlawfully or otherwise withhold from the plaintiff the possession thereof (or any part the same), to his damage twenty thousand dollars (or
286 in any other sum whatever). And this defendant denies that the value of the use or occupation (or use or occupation) of said premises since the first day of March, 1862, or since any other date, is the sum of twenty thousand dollars (or any other sum whatever.)

And for a further and separate answer to said complaint this defendant says, that he, plaintiff, ought not to have or maintain his aforesaid action thereof against him, this defendant, because he says that the said plaintiff, his ancestors, predecessors in interest, nor grantors was or were seized or possessed of the lands or premises described in said complaint (or any part of said land or premises) within two years next immediately before the commencement of this suit, and this he, this deponent, is ready to verify.

Whereupon he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against this defendant.

287 And for further and separate answer to that part of said complaint which claims damages for the detention of said land prior to the 8th day of September, A. D. 1862, this defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against this defendant for the supposed damages last above described, because he says the same did not, nor did any part thereof accrue within two years next immediately before the commencement of this suit, and that he, this defendant, is ready to verify.

Whereupon he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against this defendant for the said supposed damages last aforesaid.

Whereupon this defendant prays for a separate verdict and judgment, and to be here dismissed with his costs.

JAMES McCABE,
Att'y for Def't Onesta.

288 (Endorsed:) Filed Dec. 12th, 1866. Geo. C. Gorham, clerk, by Dan. T. Sullivan, D. C.

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
ANDREW CAROTHERS, IMPLEADED WITH THOMAS Edwards et al.

Andrew Carothers, one of the defendants in the above-entitled action, impleaded with Thomas Edwards and the other defendants, comes by his attorney, Thompson Campbell, and, for his separate answer to the complaint in the above-entitled action, says that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint.

And for a further and separate defense, the said defendant says that at the time of suing out the writ in this action, and before that
289 time, to wit, on the 12th day of May, 1866, the defendant was, and ever since has been, and now is, seized of, owner in fee, and entitled to the possession of the following parcel or lot of ground, being a part of the premises described in the plaintiff's complaint, said tract being particularly enrolled and described on a certain plot made on the 9th day of March, 1867, of the tract of land known as the Hastings or Vance tract, by A. G. Winn, the said tract being marked on said plot (A. Carothers), and contains about 13 acres, more or less. And he avers that he does not occupy and other part or parcel of the premises described in said plaintiff's complaint.

Wherefore the said defendant prays judgment of the said plaintiff, and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

(Endorsed:) Filed March 16th, 1867. G. C. Gorham, clerk, per Wheeler, D. C.

290 In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
L. M. LINCOLN, IMPLEADED WITH THOMAS Edwards et al.

L. M. Lincoln, one of the defendants in the above-entitled cause, impleaded with Thomas Edwards and the other defendants, comes by his attorney, Thompson Campbell, and, for his separate answer to the complaint in the above-entitled action, says, that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint, and he denies each and every allegation of said complaint.

For a counter claim to the alleged cause of action for damages for the value and occupation of said premises, the said defendant alleges

that at the time of the commencement of the action he was holding the premises under color of title adversely to the claims of the
291 said plaintiff, in good faith, and that while so holding he made permanent and valuable improvements on said premises so held and occupied by him as aforesaid, of the value of two hundred dollars, which said amount this defendant claims to recover by way of counter claim, of the said plaintiff's demand, to the extent that may be proved against him on the trial of this action. And asks judgment the plaintiff for the excess.

The said defendant, further answering, says that the plaintiff's right to recover any sum as damages for the use and occupation of the premises in the said complaint mentioned prior to the 14th day of November, 1863, is barred by the statute of limitations of the said State of California, and which statute is, by the said defendant, plead in bar of the plaintiff's right to recover damages against the said defendant. Whereupon the said defendant prays judgment against the said plaintiff and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

292 (Endorsed:) Filed March 16th, 1867. G. C. Gorham, clerk, per Wheeler, D. C.

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
W. W. CROUSE, IMPLEADED, WITH THOMAS Edwards.

W. W. Crouse, one of the defendants in the above entitled action, impleaded with Thomas Edwards and the other defendants, comes by his attorney, Thompson Campbell, and for his separate answer to the complaint in the above-entitled action says, that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint.

And for a further and separate defense the said defendant says, that the time of issuing the writ in this action and before that time, to wit, on the first day of March, 1862, he was and ever since has
293 been and now is seized as owner in fee and entitled to the possession of the foregoing described parcels or lots of land, being a part of the premises described in plaintiff's complaint, and which is bounded and described as follows: Bounded on the north by the road leading from Sutterville to the Georgiana slough road and lands of Fred Windrick, on the east by lands of the said Windrick and the last line of the land described in plaintiff's complaint, on the south by the government line and lands of Leonard Hoyt, and on the west by a fence, containing in all about sixty acres; also another tract of about two acres situate and lying on the bank of the Sacramento River, on which is a blacksmith shop and other buildings. And he avers that he does not occupy any other part or parcel of the premises described in said plaintiff's complaint.

For a counter claim to the alleged cause of action for damages for the use and occupation of said premises, the said defendant alleges that
294 at the time of the commencement of this action he was holding the premises so described and occupied by him as aforesaid, un-

der color of title in good faith and adversely to the claims of the said plaintiff, and that while so holding said premises as aforesaid, he made permanent and valuable improvements thereon of great value, to wit, of the value of one thousand dollars, which said amount the defendant claims to recover by way of counter claim to the plaintiff's demand to the extent they may be proved against him on the trial of this action, and asks judgment against the plaintiff for the excess.

And for a further counter claim to the plaintiff's alleged cause of action for damages, the said defendant alleges that during the time he so held and occupied said premises he paid delinquent taxes that were levied on said premises and on the improvements thereon to the amount of two hundred dollars, which last mentioned amount, together with interest thereon at the rate of five per cent. per month from the
295 date of payment of such taxes until the commencement of this action, the defendant claims shall be dedu'ced from the amount that may be proved against him on the trial of this action.

The said defendant, further answering, says that the plaintiff's right to recover any sum as damages for the use and occupation of the premises so occupied by the said defendant as aforesaid prior to the 1st day of March, A. D. 1862, is barred by the statute of limitation of the said State of California, which statute is by said defendant plead in bar of plaintiff's right to recover damages against said defendant.

And for a further and separate defense the defendant avers that neither the plaintiff, his ancestors, predecessors, or grantors were possessed or seized of that portion of the premises described in said plaintiff's complaint as occupied and possessed by the said defendant, as hereinbefore particularly described and set forth, within five years before the commencement of this action.

Wherefore the said defendant prays judgment against the said
296 plaintiff and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

(Endorsed:) Filed March 16th, 1867. G. C. Gorham, cl'k, per Wheeler, D. C.

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
R. SHERBURNE, IMPLEADED WITH THOMAS Edwards.

R. Sherburne, one of the defendants in the above entitled cause, impleaded with Thomas Edwards and the other defendants, comes by his attorney, Thomas Campbell, and for his separate answer to the complaint in the above entitled action, says that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint.

And for a further and separate defense, says that at the
297 time of suing out of this writ in this action and before that time, to wit on the first day of March, A. D. 1862, the defendant was, and ever since has been and now is, seized as owner in fee and entitled to the possession of the following described parcel or lot of ground, being a part of the premises described in plaintiff's complaint, and which is bounded and described as follows: Bounded on the north by lands of

Lincoln and Lake, on the east by a fence, on the south by D. E. Hasting's land, and on the west by the Sacramento River, containing in all about twenty-two acres. And he avers that he does not occupy any other part or parcel of the premises described in said plaintiff's complaint.

For a counter claim to the alleged cause of action for damages for the value and occupation of said premises, the said defendant alleges that at time of the commencement of this action he was holding the premises so described and occupied by him as aforesaid under color of title in good faith and adversely to the claim of the said plaintiff,
298 and that while so holding said premises he made permanent and valuable improvements thereon, to wit, of the value of two thousand dollars, which said amount this defendant claims shall be deducted from the amount that may be proved against him on the trial of this action, and he asks judgment against the plaintiff for the excess. And for a further counter claim to the plaintiff's cause of action for damages the said defendant alleges that during the time he so held and occupied said premises so claimed by the plaintiff in said complaint he paid delinquent taxes that were levied on said premises and on the improvements thereon to the amount of five hundred dollars, which last mentioned amount, together with the interest at the rate of five per cent. per month thereon from the date of the payment of such taxes until the commencement of this action, the defendant claims shall be deducted from the amount that may be proved against him on this action.

The said defendant, further answering, says, that the plaintiff's
299 right to recover any sum as damages for the use and occupation of the premises so possessed and occupied by the said defendant as aforesaid, prior to the 14th day of November, A D. 1863, is barred by the statute of limitations, and which statute is by the said defendant plead as bar of the plaintiff's right to recover damages against the said defendant.

And for a further and separate defense the defendant avers that the plaintiff, his ancestors, predecessors or grantors were possessed or seized of that part of the premises described in the complaint as occupied and possessed by the said defendant as hereinbefore particularly set forth within five year' before the commencement of this action.

Whereupon the said defendant prays judgment against the said plaintiff, and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

300 (Endorsed:) Filed March 16, 1867. G. C. Gorham, c'k, per Wheeler, D. C.

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
LEONARD HOYT, IMPLEADED WITH JEFFERSON LAKE, et al.

Leonard Hoyt, one of the defendants in the above entitled action, impleaded with Jefferson Lake and other defendants, comes by his attorney Thompson Campbell, and for his separate answer to the complaint in the above-entitled action, says that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint.

And for a further and separate defense the said defendant says, that at the time of the suing out of the writ in this action and before that time, to wit, on the first day of March, A. D. 1862, the defendant was and
301 ever since has been and now is seized as owner in fee and entered to the possession of the following described parcel or lot of ground, being a part of the premises described in plaintiff's complaint, and which is bounded and described as follows: Bounded on the north by a ditch fence and by land claimed by S. P. Carr and others, on the east by land owned and occupied by Stewart and Lowe, on the south by a ditch fence and by lands of B. C. St. John and one Tolls, and on the west by the Sutter Lake, containing about sixty acres, more or less. And he avers that he does not occupy any other part or parcel of the premises described in said plaintiff's complaint.

For a counter claim to the alleged cause of action for damages for the use and occupation of said premises, the said defendant alleges that at the time of the commencement of this action he was holding the premises so described and occupied by him as aforesaid, under color of title, in good faith and adversely to the claims of the said plaintiff, and
302 that while so holding said premises he made permanent and valuable improvements on the same of great value, to wit, of the value of one thousand dollars, which said amount the defendant claims to recover by way of counter claim to the said plaintiff's demand to the extent that may be proved against him on the trial of this action, and asks judgment against the plaintiff for the excess.

And for a further counter claim to the plaintiff's alleged cause of action for damages, the said defendant alleges that during the time he so held and occupied said premises, he paid delinquent taxes that had been levied on the premises and on the improvements thereon, to the amount of two hundred dollars, which last mentioned amount, together with interest at the rate of five per cent. per month, from the date of the payment of said taxes until the commencement of this action, the defendant claims shall be deducted from the amount that may be proved against him on the trial of this action.

The said defendant further answering says: that the
303 plaintiff's right to recover any sum as damages for the use and occupation of the premises so occupied by the said defendant as aforesaid prior to the 14th day of November, A. D. 1863, is barred by the statute of limitation of the said State of California, and which statute is by the said defendant plead in bar of the plaintiff's right to recover damages against the said defendant.

And for a further and separate defense the defendant avers that neither the plaintiff, his ancestors, predecessors, or grantors were possessed or seized of that portion of the premises described in the complaint as occupied and possessed by the said defendant as hereinbefore particularly described and set forth within five years before the commencement of this action.

Wherefore the said defendant prays judgment of the said plaintiff and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

304 (Endorsed:) Filed March 16th, 1867. G. C. Gorham, cl'k, p'r Wheeler, D. C.

In the circuit court of the United States in and for the State of California.

IRA G. FRENCH
vs.
J. LAKE, IMPLEADED WITH THOMAS EDWARDS et al.

J. Lake, one of the defendants in the above entitled action, impleaded with Thomas Edwards and the other defendants, comes by his attorney, Thompson Campbell, and for a separate answer to the complaint in the above-entitled action, says: that he is not guilty of the trespass and the ejectment mentioned in plaintiff's complaint mentioned, and he denies each and every allegation of said complaint.

And for a further and separate defense, says that at the time of the suing out of the writ in this action and before that time, to wit,
305 on the 1st day of March, A. D. 1862, the defendant was and ever since has been and now is seized as owner in fee and entitled to the possession of about 149 acres of the premises described in the said plaintiff's complaint and the part occupied and possessed by said defendant and described, as follows: Beginning on the Burs southwest corner; thence west 165 rods to a stake on the west margin of Tule Lake; thence back to first station; thence north with Burs western boundary line 58 rods to his northwest corner, from which a large lone white-oak tree bears N. 81° 15′ west and a large stump of an oak tree which bears S. 84°, thence continuing same course 175 rods to a stake at Lathrop's west boundary; thence west 115 rods to a stake in the tule of a lake of the place of beginning, containing one hundred and forty-nine acres of land; also the following described lots of land in the town of Sutter, and known as lots numbered eleven and twelve in block 178, and he avers that he does not occupy or possess any other part or
306 parcel of the premises described in said plaintiff's complaint.

For a counter-claim to the alleged cause of action for damages for the value and occupation of said premises the said defendant alleges that at the time of the commencement of this action he was holding the premises so described and occupied by him as aforesaid under color of title, in good faith and adversely to the claim of the said plaintiff, and that while so holding said premises he made permanent and valuable improvements on the same of the value of five hundred dollars, which said sum this defendant claims to recover by way of counter-claim of the said plaintiff's demand to the extent that may be proved against him on the trial of this action, and asks judgment against the plaintiff for the excess.

For a further counter-claim to the plaintiff's alleged cause of action for damages, the said defendant alleges that during the time he
307 has held and occupied said premises he has paid delinquent taxes that were levied on said premises and on the improvements thereon to the amount of one hundred dollars in gold coin of the United States, which last-mentioned amount, together with interest thereon at the rate of five per cent. per month from the date of the payment of such taxes until the commencement of this action, the defendant claims shall be deducted from the amount that may be proved against him on the trial of this action.

And said defendant, further answering, says that the plaintiff's right to recover any sum as damages for the use and occupation of the premises so possessed and occupied by the said defendant as aforesaid prior

to the first day of March, A. D. 1863, is barred by the statute of limitations of the State of California, and which statute is by the said defendant placed in bar of the plaintiff's right to recover damages against the said defendant.

Wherefore the said defendant prays judgment against the said
308 plaintiff, and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

(Endorsed:) Filed March 16th, 1867. G. C. Gorham, cl'k, p'r Wheeler, D. C.

At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco on the 3d day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Present, the honorable M. P. Deady, district judge.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

And now, at this day, comes the parties by their respective at-
309 torneys, and this cause being argued by counsel is submitted, and the jury being charged by the court, under their verdict, in the words and figures following, to wit: "We, the jury, find for the defendants."

Judgment.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

Now, at this day, this cause coming on to be heard in its regular course upon the calling of the calendar, and a jury of twelve men being duly empanelled and the parties being present by their respective attorneys, and the testimony and arguments of counsel being heard and the jury charged touching the law, the action was submitted to the jury, who, after due deliveration had, return a verdict in the words and figures following, to wit: "We, the jury, find for the defendants."

Now, thereupon, by reason of the law and the premises, and it appearing that, as against all the other defendants herein, this cause
310 has been heretofore determined, it is now here considered by the court that plaintiff, Ira G. French, take nothing by his action aforesaid as against the defendants, W. T. Carothers, J. T. Carothers, Samuel Onesta, Antone De Silva, David Morill, Samuel Ohers, Leonard Hoyt, Jefferson Lake, W. W. Crouse, L. M. Lincoln, Andrew Carothers, Thomas Edwards, and R. Sherburne, and that they are not guilty of the trespass and ejectment charged against them in manner and form as the said plaintiff hath within complained against them, and that, as against them, the said defendants aforesaid, the action herein be, and the same is hereby, dismissed, and that the said defendants go hence without day, and that they do have and recover from the plaintiff their costs and disbursements in this action to be taxed.

DEADY, *Judge.*

(Endorsed:) Filed April 26th, 1867. Geo. C. Gorham, cl'k, p'r Wheeler, D. C.

311 Second. That said Robert H. Vance, plaintiff in this action, employed one of the attorneys in said action and requested him to commence said action in the name of said French, and gave said attorney the sum of one hundred dollars to pay the costs and expenses thereof, and that said attorney was also the attorney in fact of the said Ira G. French; and that said R. H. Vance was a witness and testified in said cause, and had full knowledge thereof.

Third. That on the 27th day of September, 1867, and since the trial of the cause and entry of the judgment in the said circuit court, said Ira G. French released, remised, and quitclaimed said land described in said complaint to the said R. H. Vance by his own proper deed.

Fourth. That on the first day of March, 1862, said Vance made, executed, and delivered to said French a deed purporting to convey
312 the same premises described in the complaint in said suit of French vs. Edwards et al., and in the complaint in this action, which deed was absolute on its face and purported to convey the said premises in fee to said French; and that on the same first day of March, 1862, and, as a part of the same transaction, the said French made, executed, and delivered to said Vance an instrument in writing in words and figures, to wit:

Articles of agreement made and entered into this 1st day of March, one thousand eight hundred and sixty-two, between Ira G. French of the one part, and Robert H. Vance of the other part, both of Sacramento, State of California, as follows:

R. H. Vance, having this first day of March, 1862, made and executed to Ira G. French a deed to all lands belonging to the said Vance in Sacramento County, State of California, description of which reference is made to deed recorded the 1st day of March, 1862, in the record-
313 er's office in Sacramento Co., it is understood and agreed to between the said parties that the said land was deeded by the said Vance to the said French as security for the payment of a note of eighteen thousand two hundred and forty-one $\frac{82}{100}$ dollars, dated February 10, 1862.

It is further understood that the said French agrees to endorse on said note, from time to time, all moneys received by him for sales made of any of said land; and it is further agreed that as soon as the said note is paid, either from the sales of said land or in any other way, so that the said French receives the amount of his note and interest, he binds himself, his heirs, executors, administrators, to redeed to said Vance all of the land first deeded to said French by deed of March 1st, 1862, excepting such lands as may have been sold by said French and the proceeds of said sales applied on the said Vance's note.

I. G. FRENCH.

Signed, sealed the day and year above written.

314 As conclusions of law from the foregoing facts the court finds—

First. That, as against the defendants, W. T. Carothers, J. T. Carothers, Samuel Onesta, A. G. Silva, Leonard Hoyt, Jefferson Lake, W. W. Crouse, L. M. Lincoln, Andrew Carothers, Thomas Edwards, and R. Sherburne, the plaintiff is estopped from maintaining this action by the verdict and judgment entered in said circuit court in the said action of French vs. Edwards et al., and that said verdict and judgment is a bar to said plaintiff's action herein.

Second. That said action as to said defendants be dismissed, and that

said defendants have judgment against said plaintiff, Vance, for their costs herein laid out and expended, and go hence without day.

J. H. McKUNE,
Dist. Judge.

(Endorsed:) Filed April 18, 1868. W. B. C. Brown, clerk.

315 *Findings of the court.*

In the sixth district court, county of Sacramento, California.

ROBERT H. VANCE, PLAINTIFF,
vs.
L. M. LINCOLN, ET AL., DEFENDANTS.

On the trial of this action, after the trial and decision of the plea of a former recovery in bar, interposed by some of the defendants, evidence was introduced as to the plaintiff's title, from which the court finds the following facts:

First. That pursuant to the provisions of the act of Congress, approved the 3rd day of March, 1851, entitled "An act to ascertain and settle the private lands claims in the State of California, John A. Sutter, as claimed, filed his petition on the 8th day of March, 1852, with the commissioners to ascertain and settle the private land claims in the State of California, setting as a board in the city of San Fran-
416 cisco, in which petition he claimed the confirmation of his title to a tract of land called "New Helvetia," containing eleven square leagues, including the land described in the complaint in this action and in the said suit of French vs. Edwards et al.; said claim being founded on a Mexican grant to said Sutter for the said eleven square leagues, made on the 18th day of June, 1841, by one Juan B. Alvarado, then commandant general of the department of the Californias. And that said claim having been finally confirmed, a patent was duly issued to said Sutter by the said United States on the 20th day of June, 1866. That said Vance became the owner and seized in fee simple of said land and premises described in the complaint on the sixth day of July, 1859, by various mesne conveyances from said Sutter; and that he has continued so seized until the present time unless the title was conveyed to said French by said deed of March 1st, 1862, and ex*pect* as interrupted by said last named deed.

317 Second. That at the time of the commencement of this action the following named defendants, namely, Carlo D. Valh, Spinanna Perra, J. Adams, H. B. Gates, Mrs. C. Hastings, F. Davis, J. W. Tilden, G. Paskene, J. Paskene, J. Cook, Mrs. S. Hall, F. Windrick, and G. Onesta, were in the possession of distinct and separate portions of said premises.

Third. That at the conclusion of the trial of this action the plaintiff waived all claims for damages without prejudice.

As conclusions of law from the foregoing facts, the court finds—

That the plaintiff is entitled to a judgment for restitution of the possession of so much of said premises as said defendants may be in possession of, described in the complaint herein, and the costs of this action against de*de*fendants Carlo D. Valh, Spinanna Perra, J. Adams, H. B.

Gates, Mrs. C. Hastings, F. Davis, J. W. Tilden, G. Paskene, J. Paskene, J. Cook, Mrs. S. Hall, F. Windrick, and G. Onesta.
318 Dated April 18th, A. D. 1868.

J. H. McKUNE,
Dist. Judge

(Endorsed:) Filed April 18th, 1868. W. B. C. Brown, clerk.

Judgment.

In the district court of the sixth judicial district of the State of California, in and for the county of Sacramento.

ROBERT H. VANCE, PLAINTIFF,
vs.
L. M. LINCOLN, CARLO D. VAL H AND OTHERS, defendants.
} 11802, 2d series 6584.

This cause came on regularly for trial, Messrs Rogers and Reynolds appearing as counsel for the plaintiff, and Messrs. Moore and Alexander for the defendants. A trial by jury having been expressly waived
319 by the counsel for the respective parties, the cause was tried before the court sitting without a jury; whereupon witnesses on the part of plaintiff and defendants were duly sworn and examined and documentary evidence read, and the evidence being closed, the cause was submitted to the court for consideration and decision, and after due deliberation thereon the court delivers its finding and decision in writing, which is filed, and orders that judgment be entered in accordance therewith.

Wherefore, by reason of the law and the finding aforesaid, it is ordered, adjudged, and decreed that Robert H. Vance, plaintiff, do have and recover of and from Carlo D. Valk, Spinanna Perra, J. Adams, H. B. Gales, Mrs. C. Hastings, F. Davis, J. W. Tilden, G. Onesta, G. Paskene, J. Paskene, J. Cook, Mrs. S. Hall, and F. Windrick, defendants herein, the possession of so much of the premises described in the complaint in this action as they may be in possession of—the whole
320 tract described, as follows, viz: That certain tract and parcel of land, situated in the town of Sutter, county of Sacramento, and State of California, bounded on the northeast and south by lands formerly granted by the Mexican Government to John A. Sutter, and on the west by the Sacramento River; commencing at the corner of Main and Water streets of said town of Sutter, at the east bank of said Sacramento River, running thence up and along said river one-half of a mile; thence in an easterly direction one mile; thence southerly at right angles one-half mile; and thence westerly at right angles one mile to the place of beginning, being one-half of the original surveyed town of Sutterville, formerly so called, now called Sutter, and being the same tract of land conveyed by said John A. Sutter to one L. W. Hastings on the 30th day of November, 1849, said premises being a part of the land granted to the said John A. Sutter, under the name of "New Helvetia," and containing 320 acres, together with said
321 plaintiff's costs and disbursements incurred in this action, amounting to the sum of $89.15.

And it is further ordered that the plaintiff have his writ of possession for said premises, and execution for said costs and disbursements.

And it is further ordered, adjudged, and decreed that the defend-

ants, L. M. Lincoln, J. Lake, A. G. Silva, T. Edwards, W. W. Crouse, R. Sherburne, Samuel Onesta, A. Carothers, L. Hoyt, do have and recover of and from the said plaintiff their costs and disbursements incurred in this action, amounting to the sum of $50.65, and that said action be, and it is hereby, dismissed as against said last-named defendants.

(Endorsed:) Filed April 18th, 1868. W. B. C. Brown, clerk.

OFFICE OF THE COUNTY CLERK,
County of Sacramento:

322 I, Ham C. Harrison, county clerk of the county of Sacramento, State of California, and ex-officio clerk of the district court of the sixth judicial district, in and for said county and State aforesaid, hereby certify that I have compared the foregoing copy with the original record, complaint, answer, judgment, and findings of court in the above-entitled action, filed in my office on the 18th day of April A. D. 1868, and that the same is a full, true, and correct copy of such original, and of the whole thereof.

Attest my hand and seal of said court this 31st day of January, A. D. 1876.

[SEAL.] HAM C. HARRISON, *Clerk.*

And on the 8th day of May, 1868, said Robert H. Vance appealed from the last-named judgment to the supreme court of the State
323 of California, said appeal was in due time fully heard, and considered in said supreme court, and was by said supreme court, at the October term thereof, in the year 1869 affirmed, and said judgment is still in full force and effect, and the opinion and judgment of said supreme court, are reported in volume 38 of the reports of the decisions of the said supreme court, at page 586; and the same is referred to as a part of these findings.

And on or about the 17th day of February, 1871, said R. H. Vance conveyed all his right, title, and interest in and to said premises to John Reynolds, the attorney for said plaintiff, and is now the successor in interest of said plaintiff and said Vance, as to such legal title as they had; and said Reynolds was the attorney for said Vance and said plaintiff in this action, and in the action brought and determined in said district court.

324 XXXIII. That on the 9th day of January, 1863, the plaintiff, Ira G. French, and the defendants, Leonard Hoyt and Jefferson Lake, with others, made, executed, and delivered their certain deed of trust in words and figures as follows:

This indenture made the ninth (9) day of January, one thousand eight hundred and sixty-three, between Jefferson Lake, W. W. Crouse Daniel E. Hastings, Richard Sherburne, William Kiesker, F. Windrick, Frank Davis, Leonard Hoyt, settlers on land hereinafter described, and Robert H. Vance, Ira G. French, and George L. Gibson, Sutter claimants of said land, parties of the first part, and Edward Martin, Francis E. Lynch, of the city and county of San Francisco, parties of the second part, witnesseth:

That the said parties of the first part, for and in consideration
325 of the sum of one dollar to each of them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, convey, and confirm unto the said parties of the second part, and to their heirs

and assigns forever, all and each of our right, title, and interest in and to the following tract or piece of land, situate, lying and being in the county of Sacramento, State of California, and bounded and described as follows, viz: Commencing at a point on the Sacramento River, in a right line with the centre of Main street, in the town Sutterville, as the same is laid down on a map of said Sutterville, made by C. W. Coots, and dated July 1st, 1850, and filed in the office of the county recorder of Sacramento County on the 8th day of August, 1850; and running thence in an easterly direction along the center of said Main street to a point one mile from the place of beginning; thence at right angles northerly one half mile; and
326 thence at right angles westerly to the Sacramento River; and thence southerly along the Sacramento River to the place of beginning, together with all and singular the hereditaments and appurtenances thereunto belonging, or in any way or manner appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, rights, title, and interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the parties of the first part, in or to the above described premises, and every part and parcel thereof, with the appurtenances, except the buildings thereon: to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever, as joint tenants, upon trust, nevertheless, and to and for the uses, intents, and purposes hereinafter limited, described, and declared, that is to say upon trust, to hold
327 and convey the same in lots of such size and for such prices as shall be directed and designated by a committee of 4 persons, or a majority thereof, said committee to be selected as follows, to wit, two members thereof by the parties hereto of the first part herein designated "settlers," one member thereof by the parties hereto who are designated as Sutter "claimants," and one member thereof by the said railroad company now being formed and to be incorporated for the purpose of constructing, owning, and maintaining a railroad leading from said Sutterville, and connecting with the Sacramento Valley Railroad. The proceeds of sales are to be distributed and paid immediately upon the receipt thereof by the said parties of the second part, as follows: eight twenty-fourths thereof shall be paid to the railroad company to be incorporated as aforesaid, when and so soon as the said railroad shall have been completed, three twenty-fourths thereof to
328 the said parties hereto, who are herein designated as "settlers," and who are in possession and entitled to the possession (under settlers rules) of the several lots sold as aforesaid, and the remaining thirteen twenty-fourths thereof to the parties hereto, who are designated as "Sutter claimants," and who may hold the Sutter title to the several lots so sold as aforesaid; provided, however, if there shall be conflicting claims between said Sutter claimants to said moneys, the part of the moneys belonging to said claimants as aforesaid shall be held by the said party of the second part until such conflicting claims shall have been settled and determined by arbitration, compromise, or legal proceedings, when the same shall be paid to such of the said Sutter claimants as shall be thus determined to be the owner of the Sutter title to the lot or lots about which such dispute or conflicting claims shall have been or arizen, or if any dispute shall arise between any of the
329 said settlers as to the possession of the lots so sold or any of them, then the three twenty-fourths of said money arising from the lots,

the possession of which shall be in dispute as aforesaid, shall be held by said party of the second part until said dispute is determined as hereinbefore provided as to the Sutter claimant's dispute, and when such disputes are settled, then the said money shall be paid to the person or persons so found and determined to be entitled thereto, and provided further, that when any lot or lots are sold in possession of which there are no settlers who are parties to this deed, sixteen twenty-fourths of the proceeds of such sales shall be paid to the Sutter claimants, and the other eight twenty-fourths to the said railroad company; and provided further that if the said parties to this deed, who are herein designated as parties of the first part, and the railroad company, shall fail to select their four members of the said committee within five days after
330 the commencement of the said railroad in good faith, or if such committee so selected as aforesaid shall fail to agree as to the directions to be given to the said parties of the second part as to the said sales within thirty days after the commencement in good faith of said railroad as aforesaid, then said parties of the second part shall proceed to sell the said lands at public auction, duly noticed and fairly conducted, for the best prices they can obtain for the same, in such sized lots and in such locations as they shall deem for the best interests of all the parties interested, provided that they shall not sell more than one twentieth part of said lands at any one sale, nor make more than one sale in a month; and provided further, that no conveyances shall be made by the said party of the second part until the said railroad shall have been commenced in good faith as aforesaid, and this conveyance shall be void if such railroad shall not be built within one year from the date of these
331 presents; provided, however, that if the iron for said railroad shall be lost or detained in its transit from the Atlantic States by any accident, then the time for completing said railroad shall be extended to two years instead of one year; provided, further, that the said railroad company, at any time after the commencement in good faith to build said railroad, may select a block of land as the same are laid out in said map of the town of Sutterville for the use of said railroad company, which block so selected shall be conveyed to said railroad company, paying therefor the sum of two thousand dollars; provided, however, that if any portion of said lands shall have been sold and conveyed by the said parties of the second part before the completion of the said railroad, the title to such part so sold shall not be affected by the failure to complete said railroad as aforesaid, but the portion of the
332 purchase price of said parts of the land sold which is hereinbefore provided to be paid to the said railroad company shall be paid one-half to said settlers and the other half to the said Sutter claimants, if the said railroad is not completed within two years as aforesaid; provided, further, that all sales and conveyances herein provided to be made, and all and every act and thing whatsoever herein provided to be done by the said parties of the second part, shall and may be done by the said Edward Martin, unless he shall die or remove from the said State, or be unable to act; in which case alone the said Francis E. Lynch shall perform all the acts and exercise all the powers herein provided to be done and excercized by the said parties of the second part.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

JEFFERSON LAKE. [SEAL.]
W. W. CROUSE. [SEAL.]
RICHARD SHERBURN. [SEAL.]
D. E. HASTINGS. [SEAL.]
333 LEONARD HOYT. [SEAL.]
WILLIAM KIRSKER. [SEAL.]
FRANK his + mark. DAVIS. [SEAL.]
F. WINDRICK. [SEAL.]
ROB'T H. VANCE. [SEAL.]
IRA G. FRENCH, [SEAL.]
By JOHN REYNOLDS,
His Attorney in Fact.
GEORGE L. GIBSON, [SEAL.]
By JOHN REYNOLDS,
His Attorney in Fact.

In presence of—
GEORGE A. KING.

Said deed was duly recorded February 28th, 1863.

The railroad company mentioned in said deed to Martin and Lynch was never incorporated, nor was said railroad ever commenced, and the said Martin and Lynch did not in fact, nor did either of them, execute or deliver any instrument of conveyance reconveying, or purporting to reconvey to the said French, any part of the land so conveyed to them as trustees at any time either before or after this action was commenced.

334 XXXIV. Three days before the commencement of this action, and for the express purpose of ascertaining who were in possession of the premises in question with a view to the institution of this action against the proper parties, the agent of the plaintiff went to the premises in controversy to obtain the necessary information. Having been informed that the defendant Lincoln claimed to be in possession of a portion of said premises, he called upon said Lincoln and inquired of him if he was in possession of any part of said land, and said Lincoln told said agent in reply to said inquiry that he was, and that he intended to keep it. Said tract of which he so alleged himself to be in possession is known as the "Tule land," including what is known as "Sutter Lake," and contains sixty acres, and is a part of the premises described in the complaint, and lies between the red line in said plat forming the westerly boundary of the tracts marked Hoyt, Crouse and Caruthers and the Sacramento River. At the time said agentso visited said prem-
335 ises he saw some cattle belonging to defendant Edward, and others belonging to defendant Hoyt, pasturing upon that portion of said tule land, lying south of the road, being the southerly part of said tract, but it does not appear whether under any claim of right or otherwise, on the part of said Hoyt and Edwards, or either of them; nor does it appear that either of said parties, Hoyt and Edwards, were exercising any acts of dominion over said tract upon which their cattle were so seen pasturing. The said sixty acres was otherwise vacant and unoccupied at said time and at the commencement of this action. The said Lincoln was before and at that time claiming title and the right of possession, and he has ever since claimed title and the right of possession to all the land in controversy, under and by virtue of the said tax

sale and decree thereunder, set out in these findings. At the time of the commencement of this action other defendants, including the
336 defendants, De Silva, Onesté, O'Ness, and Morrill, had possession of about forty-five acres, in the aggregate, of the land in controversy other than and lying adjacent to the said sixty acres of tule land, said forty-five acres including land occupied as gardens, in blocks 8, 9, 130 and 143, as shown in said plat. On the 21st day of September, 1866, said Lincoln obtained an order for a writ of assistance, founded on said sale to him for taxes, and said first tax deed set out in the findings; and such proceedings were thereupon had that the said Lincoln procured a writ of assistance, directing the sheriff of said Sacramento County to put him in possession of said land, which writ came into the hands of said sheriff on the fourth day of January, 1867, and the said sheriff, on the said day, turned said Morrill, O'Ness, Onesté, De Silva and their associates, out of possession of said forty-five acres, and placed said Lincoln in possession, and said Lincoln, also, by authority of said writ and said sheriff took possession of said sixty acres
337 of tule land, which was then vacant. And thereupon said Lincoln leased the said garden lands to said defendants Onesté and De Silva, and the said Lincoln has ever since been, and he still is, either in person or by his tenants, in possession of said sixty acres of tule lands, and said forty-five acres; and said Lincoln, from the commencement of this action, has taken a leading and active part in its defence, and has defended for his said tenants as well as for himself. From the foregoing facts, I find that there was such a possession in, or ouster by, said Lincoln of the said sixty acres of tule land, as to entitled the plaintiff to maintain this action, provided he is otherwise entitled to recover.

XXXV. That the defendant Crouse had possession of about 60 acres of the land in controversy in this case, represented on the map made part of these findings, by a red line, that part being marked,
338 "Crouse;" that the defendant Hoyt, at the time this action was commenced, had possession of about 50 acres of said land, as marked on said map and designated by red lines around the name Hoyt, and said Hoyt at that time was the owner of block No. 2, part of the land in dispute, as shown on said map; that the defendant R. Sherburn, at the date of commencement of this action, had possession of about one half acre of said land, at a place marked on said map "Sherburn," partly on the street and partly in block "A," and about 22 acres, lying east of Water street and west of Lake street.

XXXVI. The value of the rents and profits, and use and occupation of the land possessed by said defendant Hoyt, exclusive of block 2, since the commencement of this action, is the sum of $159.00 per annum.

The value of the rents and profits and use and occupation of said 60 acres of tule land, possessed by the defendant Lincoln,
339 since the commencement of this action, is the sum of $30.00 per annum.

The value of the rents and profits and use and occupation of the land possessed by the defendants Antone de Silva, Samuel O. Ness, and Samuel O'Nesta since the commencement of this action is the sum of $20.00 per annum.

The value of the use and occupation and rents and profits of the land possessed by the defendant Sherburn, exclusive of lot 5 in block 186, since the commencement of this action is the sum of $109.00 per annum.

The value of the use and occupation and rents and profits of the land possessed by the defendant Crouse, exclusive of lot 3, in block 186, lot

1, in block 150, and lots 1 & 7, in block 163, since the commencement of this action is the sum of $236.00 per annum.

XXXVII. The value of the premises in controversy is more than ten thousand dollars.

340 As conclusions of law, the court finds:

1. That the plaintiff is entitled to the possession of all the premises described in the complaint, which are included in the patent to John A. Sutter, as hereinbefore found, and to judgment for the possession thereof, except the following lots and parts of lots and blocks:

Blocks 2 & 149.
Lots 8 and 9 in block 161.
Lot 4 in block 147.
Lot 2 in fractional block A.
Lot 10 in block 148.
Part of lot 1 only (80 by 40 feet) in block 135.
Lot 3 in block 161.
Lot 1 in block 150.
Lot 3 in block 148.
Lot 3 in block 189.
Lot 9 in block 174.
Lot 1 in block 163.
Lot 1 in block 16.
Lots 3 and 7 in block 1.
Lot 7 in block 175.
Lot 5 in block 186.
Lot 7 in block 174.
Lot 1 in block 161.
Lot 7 in block 174.

341 Lot 3 in block 16.
Lot 3 in block 136.
Lot 7 in block 189.
Lot 7 in block 49.
Lot 1 in block 150.
Lot 7 in block 163.
Lot 10 in block 161.
Lot 25 in block 148.
Lot 9 in block 148.
Lot 7 in block 189.

2. That the plaintiff is entitled to judgment against the defendant L. M. Lincoln for three hundred and thirty dollars, that being the value of the rents and profits of the part of said premises found to be in his possession, as stated in the foregoing findings of fact, designated in said findings as tule land, and containing sixty acres.

3. That the plaintiff is entitled to judgment against the defendant L. Hoyt for the sum of seventeen hundred and forty dollars, that being the value of the rents and profits of that portion of the premises
342 in controversy found to be in his possession, as stated in the findings of fact, except block 2, to which block said Hoyt had title.

4. That the plaintiff is entitled to judgment against the defendants Antone de Silva, Samuel O'Ness, and Samuel Onesta for two hundred and twenty-five dollars, that being the value of the rents and profits of that part of said premises in controversy found to be in the possession of said De Silva, O'Ness, and Onesté, as stated in the findings of fact herein.

5. That the plaintiff is entitled to judgment against the defendants R. Sherburn for the sum of twelve hundred dollars, that being the value

of the rents and profits of that portion of the premises in controversy found to be in his possession, as stated in the foregoing findings of fact, except lot 5 in block 186.

6. That the plaintiff is entitled to judgment against the de-
343 fendant W. W. Crouse for the sum of two thousand five hundred and ninety-six dollars, that being the value of the rents and profits of that portion of the premises in controversy found to be in his possession, as stated in the foregoing findings of fact, except lot 3 in block 162 and lot 1 in block 150, and lots 1 & 7 in block 163.

7. That plaintiff is entitled to his costs against all of said defendants except A. Carothers, Wm. P. Carothers, Thomas Carothers, Sarah W. Edwards, administratrix, &c., and Jefferson Lake, as to which last named defendants a dismissal will be entered herein without costs.

Let judgment be entered accordingly.

October 7, 1878.

(S'g'd) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed 7 October, 1878. L. S. B. Sawyer, clerk.

344 *Judgment.*

In the circuit court of the United States of America of the ninth judicial circuit in and for the district of California.

IRA G. FRENCH
vs.
SARAH W. EDWARDS, ADMINISTRATRIX OF THE estate of Thomas Edwards, deceased, L. M. Lincoln, W. W. Crouse, Leonard Hoyt, Wm. P. Carothers, executor of the last will and testament of A. Carothers, deceased; R. Sherburne, Jefferson Lake, Antonio de Silva, Samuel O'Ness, Samuel Onesti, and David Morrell.

The above entitled action having been tried before the court without a jury, a jury trial having been waived by the parties, and the same having been argued and submitted to the court for decision, and the same having been duly considered, and the findings of the court being
345 signed and filed this day, and the court having ordered a judgment to be entered in favor of the plaintiff in accordance with the said findings; and the defendant David Morrell having failed to answer the amended complaint filed in this action, and his default for want of such answer having been duly entered; and the action having been dismissed by agreement of the parties without costs as against the defendants, Wm. T. Carothers, executor, &c., Sarah W. Edwards, administratrix, &c., W. P. Carothers, Thomas Carothers, and Jefferson Lake: It is now by the court ordered, adjudged, and considered that the plaintiff, Ira G. French, do have and recover of and from the defendants L. M. Lincoln, W. W. Crouse, Leonard Hoyt, H. Sherburn, Antonio de Silva, Samuel O'Ness, and Samuel O'Nesti, the possession of the premises described in the complaint as follows: All that parcel or tract of land situated in the town of Sutter, county of Sacramento and State of California, bounded on the north, east, and south by land formerly
346 granted by the Mexican Government to one John A. Sutter, and on the west by the Sacramento River; commencing at the corner of Main and Water streets of said town of Sutter, at the east bank of

said Sacramento River; running thence in a northerly direction, up and along said river one-half mile; thence in an easterly direction one mile; and thence southerly at right angles one-half mile; and thence westerly at right angles one mile to the place of beginning; being one-half of the original town of Sutterville formerly so called, now called Sutter, and being the same tract of land conveyed by said John A. Sutter to one L. W. Hastings on the 30th of November, 1849, said premises being a part of the land granted to the said John A. Sutter under the name of "New Helvetia," and containing 320 acres of land, except about 25 acres of said land described in the complaint not embraced in the
347 patent of the United States to said Sutter, being blocks 142, 52, 53, and 54, and parts of blocks 51, 55, 140, 141, and 155 as laid down on the map of said town of Sutter, and as designated on the plat annexed to the findings filed in this case; except, also, the following lots and parts of lots and blocks as laid down and designated on said map and plat, to wit; blocks 2 and 149; lots 8 and 9 in block 161; lot 4 in block 147; lot 2 in fractional block A; lot 10 in block 148; part of lot 1 only (80 by 40 feet) in block 135; lot 3 in block 161; lot 1 in block 150; lot 3 in block 148; lot 3 in block 189; lot 9 in block 174; lot 1 in block 163; lot 1 in block 16; lots 3 and 7 in block 1; lot 7 in block 175; lot 5 in block 186; lot 7 in block 174; lot 1 in block 161; lot 7 in block 174; lot 3 in block 16; lot 3 in block 136; lot 7 in block 189; lot 7 in block 49; lot 1 in block 150; lots 7 in block 163; lot 10 in block 161; lot 25 in block 148; lot 9 in block 148; lot 7 in block 189.

348 And it is further ordered, adjudged, and considered that the plaintiff do have and recover of and from the defendant David Morrell the possession of all the said premises described in the complaint.

And it is further ordered and adjudged that the plaintiff do have and recover as damages for withholding possession of said premises of and from the defendant L. M. Lincoln the sum of three hundred and thirty dollars ($330); and from the defendant Leonard Hoyt the sum of seventeen hundred and forty dollars ($1,740); and of and from the defendants Antonio de Silva, Samuel O'Ness, and Samuel ONesti the sum of two hundred and twenty-five dollars ($225); and of and from the defendant R. Sherburn the sum of twelve hundred dollars ($1,200); and of and from the defendant W. W. Crouse the sum of two thousand five hundred and ninety-six dollars ($2,596).

And it is further ordered and adjudged that the plaintiff do
349 have and recover of and from the defendants L. M. Lincoln, W. W. Crouse, Leonard Hoyt, R. Sherburn, Antonio de Silva, Samuel O'Ness, Samuel O'Nesti, and David Morrell for his costs and disbursements in this action expended, taxed at the sum of nine hundred fifty-nine $\frac{25}{100}$ dollars.

Judgment entered on the seventh day of October, A. D. 1878.

L. S. B. SAWYER, *Clerk.*

I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 7th day of October, A. D. 1878.

[SEAL.] L. S. B. SAWYER, *Clerk,*
By ,
Deputy Clerk.

(Endorsed:) Filed Oct. 7, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy.

350 *Bond.*

In the circuit court of the United States, 9th circuit, for the district of California.

L. M. LINCOLN, W. W. CROUSE, LEONARD Hoyt, R. Sherburn, Antonio de Silva, Samuel O'Ness, and Samuel O'Nesti, plaintiffs in error,
against
IRA G. FRENCH, DEFENDANT IN ERROR.

Know all men by these presents that we, L. M. Lincoln, as principal, and Chas. V. Brockway and Moses Sprague, as sureties, are held and firmly bound unto Ira G. French in the just and full sum of three thousand dollars, to be paid to the said French, his heirs, executors, administrators, and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated October 29, 1878.

Whereas lately at a term of said circuit court in an action de-
351 pending in said court, wherein Ira G. French, the said defendant in error, was plaintiff and the said L. M. Lincoln and others were defendants, a judgment was rendered in favor of said French and against the said Lincoln for $330 damages, with $960 for costs and for possession of the land found by the findings filed in said case to be in the separate possession of the said Lincoln;

And whereas the judge of said circuit court, on the 28th day of October, 1878, made an order in said case fixing the sum of $3,000 as the amount of the penalty, in a bond to stay execution of said judgment as to said Lincoln, pending the decision of the Supreme Court of the United States on a writ of error sued out in said case;

And whereas the said plaintiffs in error have lodged a copy of said writ of error with the clerk of said circuit court for the use of said de-
fendant in error, and have served on him a citation admonishing
352 him, the said French, to be and appear at a session of the Supreme Court of the United States, to be holden at Washington, on the 2d Monday of October, 1879:

Now, the condition of the above obligation is such that if the said plaintiffs in error shall prosecute their said writ to effect and answer all costs and damages if the said Lincoln fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

L. M. LINCOLN. [SEAL.]
C. V. BROCKWAY. [SEAL.]
M. SPRAGUE. [SEAL.]

STATE OF CALIFORNIA,
County of Sacramento:

Chas. Brockway and Mose Sprague, being duly sworn, each for himself, says he is a resident and freeholder in said county, and is worth three thousand dollars over and above all just debts and liabilities, exclusive of property exempt from execution.

C. V. BROCKWAY.
M. SPRAGUE.

353 Subscribed and sworn to before me this 30th day of Oct., 1878.
[SEAL.] D. E. ALEXANDER,
Notary Public.

(Endorsed:)
The form of the within bond and the sufficiency of the sureties thereon hereby approved October 31, 1878.

LORENZO SAWYER,
U. S. Circuit Judge.

Filed Oct. 31st, 1878.

L. S. B. SAWYER,
Clerk,
By J. F. O'BEIRNE,
D'p'y Cl'k.

354 *Bond.*

In the circuit court of the United States, 9th circuit, for the district of California.

L. M. LINCOLN, W. W. CROUSE, LEONARD Hoyt, R. Sherburn, Antonio de Silva, Samuel O'Ness, and Samuel Onesti, plaintiffs in error,
against
IRA G. FRENCH, DEFENDANT IN ERROR.

Know all men by these presents that we, Charles Brockway, Moses Sprague, are held and firmly bound unto Ira G. French in the just and full sum of three thousand dollars, to be paid to the said Ira G. French, his heirs, executors, administrator, and assigns, to which payment, well and truly to be made, we bind ouselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated October 29th, 1878.

Whereas lately, at a term of said circuit court in an action depending in said court, wherein Ira G. French, the said defendant in error, was plaintiff, and the said Samuel Oness, Samuel Oneste, Antonio
355 de Silva, and others, were defendants, a judgment was rendered in favor of said French and against the said Oness, Onesti, and De Silva for $225 damages, with $960 for costs and for possession of the land found by the findings filed in said case to be in the separate possession of the said Oness, Onesti, and De Silva;

And whereas the judge of said circuit court, on the 28th day of October, 1878, made an order in said case fixing the sum of three thousand dollars as the amount of the penalty in a bond to stay execution of said judgment as to said Oness, Onesti, and De Silva pending the decision of the Supreme Court of the United States on a writ of error sued out in said case;

And whereas the said plaintiffs in error have lodged a copy of said writ of error with the clerk of said circuit court for the use of said defendant in error, and have served on him a citation admonishing
356 him, the said French, to be and appear at a session of the Supreme Court of the United States, to be holden at Washington on the 2d Monday of October, 1879:

Now, the condition of the above obligation is such that if the said plaintiffs in error shall prosecute their said writ of error to effect, and

answer all costs and damages if the said Oness, Onesti, and De Silva fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

C. V. BROCKWAY. [SEAL.]
M. SPRAGUE. [SEAL.]

STATE OF CALIFORNIA,
County of Sacramento:

Chas. V. Brockway and Mose Sprague, being duly sworn, each for himself, says he is a resident and freeholder in said county and State, and is worth three thousand dollars over and above all just debts and liabilities exclusive of property exempt from execution.

C. V. BROCKWAY.
M. SPRAGUE.

357 Subscribed and sworn to before me this 30th day of October, 1878.

[SEAL.] D. E. ALEXANDER,
Notary Public.

(Endorsed:)

The form of the within bond and the sufficiency of the sureties thereon hereby approved, October 31, 1878.

LORENZO SAWYER,
U. S. Circuit Judge.

Filed Oct'r 31st, 1876.

L. S. B. SAWYER,
Clerk.
By J. F. O'BEIRNE,
D'p'y Clk.

358 UNITED STATES OF AMERICA,
District of California, ss:

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify that the foregoing and annexed papers are full, true, and correct copies of—

1st. The original complaint.
2nd. The answer of Samuel Onesti thereto.
3rd. The answer of Antone Silver thereto.
4th. The answer of Antone De Silva and others thereto.
5th. The answer of L. M. Lincoln thereto.
6th. The answer of W. W. Crouse thereto.
7th. The answer of R. Sherburn thereto.
8th. The answer of Leonard Hoyt thereto.
9th. The order substituting true for fictitious names of defendan
10th. Amended complaint.
11th. Amendment to amended complaint.
12th. Answer of L. M. Lincoln to amended complaint.
13th. Answer of R. Sherburn to amended complaint.
14th. Answer of Leonard Hoyt to amended complaint.
15th. Answer of W. W. Crouse to amended complaint.
16th. Answer of Thomas Edwards to amended com plaint.
17th. Answer of Antone De Silva et al. to amended complaint.
18th. Answer of Jefferson Lake to amended complaint.
19th. Order substituting Sarah W. W. Edwards, adm'r'x, def't in place of Thos. Edwards, dec'd, &c.

20th. Amendment to amended complaint.
359 21. Opinion of honorable Lorenzo Sawyer, U. S. circuit judge.
22. Finding of court.
2d. Judgment therein.
24. Bond of L. M. Lincoln et al.
25. Bond of Charles Brockway et al. in the therein entitled action.

Witness my hand and the seal of said circuit court this 16th day of August, A. D. 1879.

[SEAL.] L. S. B. SAWYER,
Clerk.
by J. F. O'BIERNE,
Deputy Clerk.

360 UNITED STATES OF AMERICA, *ss.:*

To Ira G. French, defendant in error, greeting.

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1879, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, *wherein* of the ninth judicial circuit within and for the district of California wherein L. M. Lincoln, W. W. Crouse, Leonard Hoyt, R. Sherburn, Antonio de Silva, Samuel O'Ness, and Samuel Onesti are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America this 28th day of October, 1878, and of the Independence of the United States the 103d.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

Service of the within citation admitted Oct. 28, 1878.

JOHN REYNOLDS,
Attorney for Defendant in Error.

(Indorsed:) 235. United States Supreme Court. L. M. Lincoln et al., pl'ffs in error, vs. Ira G. French, def't in error. Citation. Filed October 28, 1878. L. S. B. Sawyer, clerk, by J. F. O'Bierne, d'p'y cl'k.

361 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of the ninth judicial circuit, within and for the district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between L. M. Lincoln, W. W. Crouse, Leonard Hoyt, R. Sherburn, Antonio de Silva, Samuel Oness, and Samuel Onesti, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city

of Washington, in the District of Columbia, on the second Monday of October, A. D. 1879, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 103d.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

The above writ of error is hereby allowed.
Attest, &c.:

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *D'p'y Clk.*

(Indorsed:) 235. United States Supreme Court. L. M. Lincoln et al., pl'ffs in error, vs. Ira G. French, def't in error. Writ of error. Filed October 28th, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

(Indorsement on cover:) No. 516. L. M. Lincoln, W. W. Crouse, Leonard Hoyt, R. Sherburn, Antonio de Silva, Samuel O'Ness, & Samuel Onesti, plaintiffs in error, vs. Ira G. French. California C. C. U. S. Filed 24th September, 1879.

O.

1 UNITED STATES OF AMERICA;
District of California, ss:

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify that the foregoing and annexed papers, numbered from 1 to 357, inclusive, are full, true, and correct copies, and constitute a transcript of the record and of all proceedings in the therein entitled cause, wherein Ira G. French was plaintiff, and Thomas Edwards and others were defendants, except—

1st. The answer of G. Falteuth.
2d. Replication.
3d. Replication to plea in abatement.
4th. Bond for costs, filed by French February 20th, 1867.
5th. Findings, filed March 5th, 1867.
6th. The answer of Tilden.
7th. The answer of W. T. and J. T. Caruthers.
8th. The answer of Thomas Edwards.
9th. The answer of A. Caruthers.
10th. The answer of J. Lake.
11th. Order that the answer of defendant G. Falteuth be stricken out.
12th. Order of trial.
13th. Order of trial.
14th. Bill of exceptions, filed April 16, 1867.
15th. Order dismissing motion for new trial.
2 16th. Judgment for certain defendants, entered April 26, 1867.
17th. Judgment for certain defendants, entered April 26, 1867.
18th. Supplemental answer.
19th. Findings, filed October 30, 1872.
20th. Judgment for defendants, entered October 30, 1872.
21st. Demurrer to amended complaint.
22d. Order overruling demurrer.
23d. Order dismissing cause as to Sarah W. Edwards.
24th. Order that the default of defendant D. Morrell be entered.
25th. Order that mandate be filed, and mandate.
26th. Order that mandate be filed, and mandate copies of which exceptions are herewith returned in volume two.

[illegible] hand and the seal of said circuit court this tenth day of

20th. Amendment to amended complaint.
359 21. Opinion of honorable Lorenzo Sawyer, U. S. circuit judge.
22. Finding of court.
2d. Judgment therein.
24. Bond of L. M. Lincoln et al.
25. Bond of Charles Brockway et al. in the therein entitled action.

Witness my hand and the seal of said circuit court this 16th day of August, A. D. 1879.

[SEAL.] L. S. B. SAWYER,
Clerk.
by J. F. O'BIERNE,
Deputy Clerk.

360 UNITED STATES OF AMERICA, *ss.:*

To Ira G. French, defendant in error, greeting.

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1879, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, *wherein* of the ninth judicial circuit within and for the district of California wherein L. M. Lincoln, W. W. Crouse, Leonard Hoyt, R. Sherburn, Antonio de Silva, Samuel O'Ness, and Samuel Onesti are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America this 28th day of October, 1878, and of the Independence of the United States the 103d.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

Service of the within citation admitted Oct. 28, 1878.

JOHN REYNOLDS,
Attorney for Defendant in Error.

(Indorsed:) 235. United States Supreme Court. L. M. Lincoln et al., pl'ffs in error, vs. Ira G. French, def't in error. Citation. Filed October 28, 1878. L. S. B. Sawyer, clerk, by J. F. O'Bierne, d'p'y cl'k.

361 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of the ninth judicial circuit, within and for the district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between L. M. Lincoln, W. W. Crouse, Leonard Hoyt, R. Sherburn, Antonio de Silva, Samuel Oness, and Samuel Onesti, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city

October, A. D. 1879, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 103d.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

The above writ of error is hereby allowed.
Attest, &c.:

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *D'p'y Clk.*

(Indorsed:) 235. United States Supreme Court. L. M. Lincoln et al., pl'ffs in error, vs. Ira G. French, def't in error. Writ of error. Filed October 28th, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

(Indorsement on cover:) No. 516. L. M. Lincoln, W. W. Crouse, Leonard Hoyt, R. Sherburn, Antonio de Silva, Samuel O'Ness, & Samuel Onesti, plaintiffs in error, vs. Ira G. French. California C. C. U. S. Filed 24th September, 1879.

O.

1 UNITED STATES OF AMERICA;
District of California, ss:

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify that the foregoing and annexed papers, numbered from 1 to 357, inclusive, are full, true, and correct copies, and constitute a transcript of the record and of all proceedings in the therein entitled cause, wherein Ira G. French was plaintiff, and Thomas Edwards and others were defendants, except—

1st. The answer of G. Falteuth.
2d. Replication.
3d. Replication to plea in abatement.
4th. Bond for costs, filed by French February 20th, 1867.
5th. Findings, filed March 5th, 1867.
6th. The answer of Tilden.
7th. The answer of W. T. and J. T. Caruthers.
8th. The answer of Thomas Edwards.
9th. The answer of A. Caruthers.
10th. The answer of J. Lake.
11th. Order that the answer of defendant G. Falteuth be stricken out.
12th. Order of trial.
13th. Order of trial.
14th. Bill of exceptions, filed April 16, 1867.
15th. Order dismissing motion for new trial.
2 16th. Judgment for certain defendants, entered April 26, 1867.
17th. Judgment for certain defendants, entered April 26, 1867.
18th. Supplemental answer.
19th. Findings, filed October 30, 1872.
20th. Judgment for defendants, entered October 30, 1872.
21st. Demurrer to amended complaint.
22d. Order overruling demurrer.
23d. Order dismissing cause as to Sarah W. Edwards.
24th. Order that the default of defendant D. Morrell be entered.
25th. Order that mandate be filed, and mandate.
26th. Order that mandate be filed, and mandate copies of which exceptions are herewith returned in volume two.

Witness my hand and the seal of said circuit court this tenth day of February, A. D. 1881.

[SEAL.] L. S. B. SAWYER,
Clerk U. S. Circuit Court Ninth Dist.

ADDITION TO RECORD.

FILED MARCH 14, 1881.

Supreme Court of the United States.

L. M. LINCOLN, W. W. CROUSE, LEONARD Hoyt, R. Sherburn, Antonio de Silva, Samuel O'Ness, and Samuel Onesti, plaintiffs in error, *vs.* IRA G. FRENCH. } No. 516.

In error to the circuit court of the United States for the district of California.

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1 *Answer of Guiseppe Faltuth.*

In the circuit court of the United States in and for the northern district of California.

IRA G. FRENCH, PL'FF,
vs.
GUISEPPE FALTUTH (WHO IS SUED BY THE name of Richard Roe), impleaded with Thomas Edwards and others, defendants.

Now comes the said defendant (who is sued by the name of Richard Roe), and for answer to the complaint of said plaintiff in this cause filed answers as follows, to wit:

That the said lands described in said complaint were originally granted by government to one John A. Sutter, to wit, many years ago, but the date thereof this defendant does not know and cannot state.

2 That the said John A. Sutter at the time of the making of the said grant to him, as aforesaid, resided within the limits of the said State of California, and ever since that time has resided within the limits of said State, and now resides within said limits of said State.

This defendant says that said circuit court of the United States has no jurisdiction of the subject-matter of this suit.

Therefore prays judgment that said suit and all proceedings therein be quashed.

GUISEPPE FALTUTH,
Att'y, in Person.

(Endorsed:) Filed Dec. 12th, 1866. Geo. C. Gorham, cl'k, by Dan'l Sullivan, dep.

Replication.

3 In the circuit court of the United States for the State of California.

IRA G. FRENCH
v.
THOMAS EDWARDS.

And the said plaintiff saith that his said complaint by anything by the said defendants Thomas Edwards, L. M. Lincoln, A. Carothers, W. T. Carothers, W. W. Crouse, L. Hoyt, R. Sherburn, J. Lake, G. A. Cook, & Sarah Hall, in their said plea above alleged, ought not to be set aside or dismissed, because he says at the time of the exhibiting and filing the said complaint against the said defendants he, the said plaintiff, was, and still is, the owner of the premises in the said complaint described, and had the whole and entire interest therein

4 in his own right, and had then the entire interest in this cause.

That the said R. H. Vance mentioned in the said plea of said defendants was not then, nor is he now, the real party to this suit; nor is this plaintiff merely a nominal and colorable party plaintiff; nor that the suit herein is a controversy between the said defendants.

And this plaintiff further says that it is untrue that the said conveyance from the said Vance to this plaintiff was not merely colorable or

without consideration, or that this suit was brought, or is now pending, for the purpose of committing a fraud upon the jurisdiction of this court.

And this the said plaintiff prays may be inquired of by the count'y, and that this court may take full cognizance of this action.

S. F. & J. REYNOLDS,
Pl'ff's Att'ys.

5 (Endorsed:)
Service admitted Jan'y 30th, 1867.
THOMPSON CAMPBELL,
Att'y for D'f'd'ts.

Filed January 30th, 1867.
G. C. GORHAM, *Clk*,
By WHEELER, *Dep.*

6 *Replication to plea in abatement.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

And now comes the said plaintiff and, replying to the preliminary answer of the defendants, Thomas Edwards, L. M. Lincoln, A. Corothers, W. T. Carothers, J. T. Corothers, W. W. Crowell, L. Hoyt, R. Sherburne, I. Lake, G. A. Cook, and Sarah Hall, impleaded, &c., says that his complaint ought not to be set aside nor this action dismissed for anything in said answer contained, because he says that at the time of the commencement of this action he, the said plaintiff, was and is now
7 seized in fee of the said premises and entitled to the possession thereof. And that the conveyance mentioned in said answer, made by R. H. Vance, was made in good faith and for a valuable consideration, and this plaintiff is not, as therein alleged, merely a nominal party, but is the real party in interest in this suit. And the controversy herein is between this plaintiff and the said defendants. And that this suit was not brought, as alleged, in said answer for the purpose of committing a fraud upon the jurisdiction of this court, but with the bona fide purpose and intent to have the just rights of the plaintiff determined by this court, which has jurisdiction in the premises.

And this plaintiff further says that said conveyance was and is made and held by this plaintiff in trust to hold and possess the said lands, and sell and dispose of the same and apply the proceeds thereof,
8 first, to the payment of a large amount of indebtedness due from said Vance to this plaintiff, and then to pay to the said Vance any balance that may remain after paying such indebtedness.

And the plaintiff further says, on information and belief, that the said R. H. Vance was at the time of the commencement of this action, and is now, a citizen of the State of New York, and has not since the commencement of this suit been a citizen of this State.

And this the said plaintiff prays may be inquired of by the country, &c., and that this court may take full cognizance of this action.

S. F. & J. REYNOLDS,
Pl'ff's Att'ys.

9 CITY & COUNTY OF SAN FRANCISCO, *ss:*

John Reynolds, one of the attorneys for the plaintiff in the above-entitled action, being duly sworn, says that he is the attorney in fact, as well as one of the attorneys at law for the plaintiff, as to the property in controversy in this action. That the said plaintiff, as deponent is informed and believes, now resides in the State of New York, and is not now in this State.

Deponent further says that he has read the foregoing reply to the preliminary answer of the defendants, and knows the contents thereof, and the same is true of his own knowledge, except the matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

JOHN REYNOLDS.

Sworn before me February 7th, 1867.
[SEAL.]

JOHN WHITE,
Notary Public.

10 (Endorsed:)

It is agreed that this reply may be substituted for the one heretofore filed, and I admit due service thereof, and that this reply shall be considered as filed from the date of such filing.
Febr'y 7, 1867.

THOMPSON CAMPBELL,
Att'y for Def'ts.

Filed Feb. 8, 1867.

G. C. GORHAM, *Clk,*
P'r JOHN O. WHEELER, *Dept.*

11 *Bond for costs.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

STATE OF CALIFORNIA,
City & County of San Francisco, ss:

Whereas Ira G. French, the plaintiff in the above-entitled action, resides out of this State;

And whereas certain of the defendant's herein have required security to be given "for all costs that may be awarded against him" (the said plaintiff), "either by judgment or that may be incurred during the progress of the action:"

Now, therefore, we, the undersigned residents of the said State of California, in consideration of the premises, and of the sum of
12 one dollar, do hereby undertake and acknowledge ourselves jointly and severally bound in the sum of three hundred dollars ($300), that the said plaintiff will pay all costs and charges which may be awarded against him, by judgment or in the progress of the action, not exceeding said sum of three hundred dollars.

Dated February 20th, 1867.

W. H. RULOFSON.
H. W. BRADLEY.

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

W. H. Rulofson and H. W. Bradley, of said city and county, the persons whose names are mentioned in and signed to the foregoing undertaking, being severally duly sworn, say, and each for himself says, that he is worth the sum of six hundred dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

13

W. H. RULOFSON.
H. W. BRADLEY.

Sworn before me February 20, 1867.
[SEAL.]

F. I. THIBAULT,
Notary Public.

(Endorsed:) Filed Feb. 20, 1867. G. C. Gorham, cl'k, p. Jno. O. Wheeler, dep.

14 *Findings.*

Circuit court, U. S. district of California, February term, 1867.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

Action at law to recover possession of real property.

In pursuance of the stipulation of the plaintiff in the above entitled action and certain of the defendants therein who plead in abatement to the jurisdiction of the court, by which it is agreed that the issue of fact arising upon said plea in abatement and the replication thereto may be tried by the court without the intervention of a jury, the court now finds the following facts:

First. That on the first day of March, 1862, one R. H. Vance, by deed of bargain, sale, duly executed and delivered, conveyed to the plaintiff herein the premises in the complaint mentioned, and that such conveyance was made as aforesaid in payment of a debt then due from the said Vance to the said plaintiff, and upon no other consideration.

15

Second. That at the time of the execution and delivery of the conveyance aforesaid, an agreement in writing was executed between the grantee in such conveyance, whereby it was agreed that said grantor should have the right to repurchase from the grantee the premises in question, upon paying to the latter the amount of the consideration upon which such conveyance was made.

Third. That at the date of the execution aforesaid both the plaintiff and said Vance were residents and citizens of the State of California, and that in the year 1863 the said plaintiff removed to the State of New York, where he has ever since continued to reside, and that at the date of the commencement of this action, namely, November 8, 1866, the said plaintiff was a citizen of the State of New York.

16

Fourth. That the conveyance aforesaid so executed and accepted as aforesaid, was a real transaction and not a fictitious one; and that the same was intended by the parties thereto to vest in the plaintiff herein, in payment of the debt aforesaid, the estate of said Vance in the premises in question, subject to the condition of the right of repurchase by the grantee as aforesaid.

Conclusion of law.

And from the premises aforesaid, as a conclusion of law, the court now finds, that at the time of the commencement of this action
17 the plaintiff was entitled to bring the same in this court, and that this court has jurisdiction to try and determine the same.

DEADY, *J.*

(Endorsed:) Filed M'ch 5th, 1867. Geo. C. Gorham, cl'k, p. John O. Wheeler, dep.

18 *Answer of def't Tildon.*

In the circuit court of the United States of America in and for the northern district of the State of California.

IRA G. FRENCH, PLAINTIFF,
vs.
EDWARDS ET AL., DEFENDANTS.

Now comes the said Tildon, one of the above-named defendants, and for answer to the plaintiff's complaint herein denies generally and specifically each and every allegation contained in said complaint.

Wherefore having fully answered, said defendant Tildon prays to go hence with his costs of suit.

HENRY H. HARTLEY,
Attorney for said Defendant Tildon.

19 (Endorsed:)

We admit due service of a copy of the within answer this March 7, 1867.

S. F. & J. REYNOLDS,
Plff's Atty.

Filed M'ch 7, 1867.

GEO. C. GORHAM, *Clk.*
p. JNO. O. WHEELER, *Dep.*

20 *Answer of W. T. and J. T. Coruthers.*

In the circuit court of the United States, in and for the district of California.

IRA G. FRENCH
vs.
W. F. CORUTHER, & J. T. CORUTHERS, impleaded with Thomas Edwards, et als.

W. T. Coruthers and J. T. Coruthers defendants in the above-entitled action impleaded with Thomas Edwards and the other defendants, come by their attorney, Thompson Campbell, and for their separate answer to the complaint in the above-entitled action say that they are not guilty of the trespass and ejectment mentioned in plaintiff's complaint.

Wherefore they pray judgment of the said plaintiff and for their costs of suit.

21 THOMPSON CAMPBELL,
Att'y for Deft's.

(Endorsed:)
Service admitted.

REYNOLDS.

Filed M'ch 16, '67.

G. C. GORHAM, *Clk.*
p. WHEELER, *Dep.*

22 *Answer of Thos. Edwards.*

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
THOMAS EDWARDS, IMPLEADED WITH JEFFERSON LAKE, et als.

Thomas Edwards, one of the defendants in the above entitled cause, impleaded with Jefferson Lake and the other defendants, comes, by his attorney, Thompson Campbell, and for the separate answer to the complaint in the above entitled action, says that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint, and he denies each and every allegation of said complaint.

And for a further and separate defense says that at the time
23 of the suing out of the writ in this action, and before that time, to wit, on the first day of March, A. D. 1862, the defendant was and ever since has been and now is seized as owner in fee and entitled to the possession of the following described parcels or lots of ground, being a part of the premises described in plaintiffs' complaint, and which are bounded and described as follows: Lot numbered ten on the map and plan of the town of Sutter, drawn by C. W. Coate, July 1st, 1850, being a certain original lot of 80 by 160 feet. And he avers that he does not occupy any other part or parcel of the premises described in said plaintiff's complaint.

For a further claim to the alleged cause of action for damages for the value and occupation of said premises, the said defendant alleges that at the time of the commencement of this action he was holding
24 the premises so described and occupied by him as aforesaid under color of title in good faith and adversely to the claims of the said plaintiff, and that while so holding said premises he made permanent and valuable improvements on the same, to wit, of the value of five hundred dollars, which said amount this defendant claims to recover by way of counter-claim of the said plaintiff's demand to the extent that may be proved against him in the trial of this action, and asks judgment against the plaintiff for the excess.

For a further counter-claim to the plaintiff's alleged cause of action for damages, the said defendant alleges that during the time he so held and occupied said premises he paid delinquent taxes that were levied on said premises, and on the improvements thereon, to the amount of one hundred dollars, which last mentioned amount, together with
25 interest thereon at the rate of five per cent. per month from the date of the payment of such taxes until the commencement of this action, this defendant claims shall be deducted from the amount that may be proved against him on the trial of this action.

The said defendant, further answering, says that the plaintiff's right to recover any sum as damages for the use and occupation of the premises so possessed and occupied by the said defendant as aforesaid, prior to the 14th day of November, A. D. 1863, is barred by the statute of limitations of the said State of California, and which statute is by the said defendant plead in bar of the plaintiff's right to recover damages against the said defendant.

And for a further and separate defense the defendant avers that

neither the plaintiff, his ancestors, predecessors, or grantors was
26 possessed or seized of that portion of the premises described in the complaint as occupied and possessed by the said defendant, as hereinbefore particularly described and set forth, within five years before the commencement of this action.

Wherefore the said defendant prays judgment against the said plaintiff and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

(Endorsed:) Service admitted.

REYNOLDS.

Filed M'ch 16, 1867.

G. C. GORHAM, *Clk*,
p. WHEELER, *Dep.*

27 *Answer of A. Caruthers.*

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
ANDREW CARUTHERS, IMPLEADED WITH THOMAS Edwards et als.

Andrew Caruthers, one of the defendants in the above-entitled action, impleaded with Thomas Edwards and the other defendants, comes by his attorney, Thompson Campbell, and for his separate answer to the complaint in the above-entitled action says that he is not guilty of the trespass and ejectment mentioned in plaintiff's complaint.

And for a further and separate defense the said defendant says
28 that at the time of the suing out of the writ in this action and before that time, to wit, on the 12th day of May, A. D. 1866, the defendant was and ever since has been and now is seized as owner in fee and entitled to the possession of the following described parcel or lot of ground, being a part of the premises described in plaintiff's complaint, said tract being particularly located and described on a certain plat made on the 9th day of March, 1867, of the tract of land known as the Hoslinger or Vance tract by A. G. Wilson, the said tract being marked on said plot (A. Caruthers), and containing about 13 acres, more or less. And he avers that he does not occupy any other part or parcel of the premises described in said plaintiff's complaint.

Wherefore said defendant prays judgment of the said plaintiff and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

Endorsed:
Service admitted.

REYNOLDS.

Filed M'ch 16, '67.

G. C. GORHAM, *Clk*,
p. WHEELER, *Dep.*

29 *Answer of J. Lake.*

In the circuit court of the United States in and for the district of California.

IRA G. FRENCH
vs.
J. LAKE, IMPLEADED WITH THOMAS EDWARDS et als.

J. Lake, one of the defendants in the above-entitled action, impleaded with Thomas Edwards and the other defendants, comes by his attorney, Thompson Campbell, and for his separate answer to the complaint in the above-entitled action says that he is not guilty of the trespass and the ejectment mentioned in plaintiff's complaint, and he denies each and every allegation of said complaint.

30 And for a further and separate defense says that at the time of the suing out of the writ in this action and before that time, to wit, on the first day of March, A. D. 1862, the defendant was and ever since has been and now is seized as owner in fee and entitled to the possession of about 149 acres of the premises described in the said plaintiff's complaint, and the part occupied and possessed by said defendant is bounded and described as follows: Beginning on Bur's southwest corner; thence west 165 rods to a stake on the west margin of Tule Lake; thence back to first station; thence north with Bur's western boundary line 58 rods to his northwest corner, from which a large white oak tree bears N. 81° 15′ west, and a large stump of an oak tree which bears S. 84°; thence continuing same course 175 rods to a stake at Lathrop's west boundary; thence west 115 rods to a stake in the tule of a lake to the place
31 of beginning, containing one hundred and forty-nine acres of land; also the following described lots of land in the town of Sutter, and known as lots numbered eleven and twelve in block 178; and he avers that he does not occupy or possess any other part or parcel of the premises described in said plaintiff's complaint.

For a counter-claim to the alleged cause of action for damages for the value and occupation of said premises, the said defendant alleges that at the time of the commencement of this action he was holding the premises so described and occupied by him as aforesaid under color of title in good faith and adversely to the claims of the said plaintiff, and that while so holding said premises he made permanent and valuable improvements on the same of the value of five hundred dollars,
32 which said sum this defendant claims to occupy by way of counter-claim of the said plaintiff's demand to the extent that may be proved against him on the trial of this action, and asks judgment against the plaintiff for the excess.

For a further counter-claim to the plaintiff's alleged cause of action for damages the said defendant alleges that during the time he has held and occupied said premises he has paid delinquent taxes that were levied on said premises and on the improvements thereon to the amount of one hundred dollars in gold coin of the United States, which last-mentioned amount, together with interest thereon at the rate of five per cent. per month from the date of the payment of such taxes until the commencement of this action, this defendant claims shall be
33 deducted from the amount that may be proved against him on the trial of this action.

The said defendant, further answering, says that the plaintiff's right

to recover any sum as damages for the use and occupation of the premises so possessed and occupied by the said defendant as aforesaid prior to the first day of March, A. D. 1863, is barred by the statute of limitations of the said State of California, and which statute is by the said defendant plead in bar of the plaintiff's right to recover damages against the said defendant.

Wherefore the said defendant prays judgment against the said plaintiff and for his costs of suit.

THOMPSON CAMPBELL,
Att'y for Def't.

(Endorsed:)
Services admitted.

REYNOLDS.

Filed M'ch 16, '67.

G. C. GORHAM, *Cl'k*,
P'r WHEELER, *Dep.*

34 *Order that answer of G. Falteuth be stricken out.*

At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco on the 25th day of March, in the year of our Lord one thousand eight hundred and sixty-seven.

Present, the honorable M. P. Deady, district judge.

IRA G. FRENCH
vs.
THOS. EDWARDS.

And now, at this day, on motion of John Reynolds, esq., att'y for plaintiff, it is ordered that the answer of Guiseppe Falteuth be and the same is hereby stricken out as frivol'us.

35 *Order of trial.*

At a stated term of the district court of the United States of America for the district of California, held at the court room, in the city of San Francisco, on the 2d day of April, in the year of our Lord one thousand eight hundred and sixty seven.

Present, the honorable M. P. Deady, district judge.

IRA G. FRENCH
vs.
THOS. EDWARDS ET AL.

And now at this day comes the parties, by their attorneys, John Reynolds, esq., for plaintiff, and Thompson Campbell, for defendants, and the following-named persons from the trial jury for the term are empannelled and duly sworn, to wit, W. K. Vanderslice, Henry Barrett,
36 Joshua Lyon, H. A. George, A. C. Rand, D. M. Adlington, M. M. Baldwin, John Warren, D. W. Shepheard, R. B. Macy, I. R. Greenough, I. G. Pearson.

By consent of pl't'ff, in open court, ordered that this cause be and the same is hereby continued for the term as to the defendant Tilden. And it is further ordered that (on motion of pl'ff) plaintiff have judgment against Guiseppe Falteuth one of the defendants herein, said def't's answer having been heretofore stricken out.

Whereupon S. L. Rogers, Simon Staley, and I. G. Burke are sworn and examined on behalf of plaintiff, and plaintiffs here close their proofs.

Thereupon on motion of S. Reynolds, of counsel for the plaintiff, it appearing that the summons has been regularly served on the following-named defendants, to wit, Frank Davis, Edward Paine, S. E.
37 Hastings, Mrs. E. Lake, Mrs. Buckmaster, John Cook, Mrs. S. Hall, H. B. Gales, ——Huntoon, F. Waldrick, I. Crowell, Charles Deventon, O. Bostini, Chepere Perez, Austini Alto, and Samuel Ames, and that no answer has been filed by either of them, and the legal time allowed for answering having expired, it is ordered that the default of said defendants be entered and that judgment be entered against them according to the prayer of the complaint.

And now L. Frink and L. M. Lincoln are sworn and examined on behalf of defendants and cause continued until to-morrow.

38 At a stated term of the circuit court of the United States of America for the district of California, held at the court room in the city of San Francisco, on the 3d day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Present, the honorable M. P. Deady, district judge.

IRA G. FRENCH
v.
THOS. EDWARDS ET AL.

And now at this day comes the parties by their respective attorneys, and this cause being argued by counsel is submitted, and the jury being charged by the court render their verdict in the words and figures following, to wit:

"We the jury find for the defendant."

39 *Bill of exceptions.*

In the circuit court of the United States, district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS & OTHERS, DEFENDANTS.

Be it remembered that at the February term, 1867, of the said court, holden in and for the district of California, at the city & county of San Francisco, on the 2d, 3d, and 4th days of April, 1867, this action above entitled came on and was tried before said court, the Hon. M. P. Deady presiding; and a jury having been duly empaneled to try the issues joined therein, the said plaintiff to maintain the issues on his part introduced and read in evidence a patent issued by the Govern-
40 ment of the United States to John A. Sutter, bearing date the 20th day of June, A. D. 1866, based upon a grant of a tract of land including the premises described in the complaint in this action, made to the said John A. Sutter by the Mexican Government, on the 18th day of June, A. D. 1841, which grant was on the 8th day of March, 1852, duly presented to the commissioners to ascertain and settle the private land claims in the State of California, and afterwards duly confirmed by said commissioners, and which confirmation was afterwards duly affirmed by the United States circuit court for the northern dis-

trict of the State of California, and by the Supreme Court of the United States.

The plaintiff then introduced and read in evidence several mean conveyances by which the said premises in controversy were con-
41 veyed from said John A. Sutter to one Robert H. Vance prior to the first day of March, 1862. The plaintiff introduced and read in evidence a deed of conveyance conveying the same premises from said Robert H. Vance to the said plaintiff, bearing date on said first day of March, 1862.

It was also admitted that the defendants who had appeared in this cause were in possession of said premises at the time of the commencement of this action, and at the time of said trial.

The said defendants for the purpose of proving the title out of the said plaintiff, at the commencement of this action, offered in evidence certain documentary evidence as follows:

First. Certified copies of certain papers on file in the office of the clerk of the district—of the sixth judicial district of the State
42 of California, for Sacramento County, which are in the words following, to wit:

The case mentioned in the annexed summons having been duly referred to the court commissioner in and for said county, to hear and determine for the information of the court all questions of fact involved therein, the undersigned finds the following facts: That there are due from the defendant to the plaintiff:

State tax	$
County tax	113 75
District Attorney fees	17 06
Clerk's fees	5 20
Court tax	1 14
Sheriff's fees	
Court commissioner's fees	6 00
Printers' costs	7 50
Auditor's fee	75
Total	$

And duly reports by drafting the form of decree for said case
43 in tax decree book F, page 202, court commissioner's office, Sacramento, Oct. 3d, 1865.

E. B. CROCKER,
Court Commissioner.

STATE OF CALIFORNIA,
County of Sacramento, ss:

M. M. Estee, being duly sworn, deposes and says that he is district attorney of said county; that on the 20th day of June, 1865, a certified copy of the annexed summons in this cause (which summons is hereby made a part of this affidavit) was duly posted at the court house in said county, and on the same day a notice was given by him, stating that said summons issued out of the district court of the sixth judicial district, and containing a description of the property described in said summons, and stating and briefly denoting by figures the amount of

taxes and the year of its assessment set forth in said summons,
44 and notifying all owners and claimants of any right, title, or interest in the property described in said summons to appear in the said court in the city of Sacramento, in said State and county, within eight weeks from the date aforesaid, and answer the complaint filed in this cause against said property, or that judgment would be rendered against said property for the sale thereof and for the relief prayed in said complaint, and said notice was thereupon duly published in the Daily Bee, a newspaper published in said county, once each week for eight successive weeks, commencing at the date first aforesaid.

M. M. ESTEE.

Subscribed & sworn to before me this 18th day of September, 1865, and filed the same day.

A. C. BIDWELL,
County Clerk.

45 1864. *Tax.*

STATE OF CALIFORNIA,
County of Sacramento:

In the district court, sixth judicial district, in said county.

THE PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
5[illegible]NCE, DOE No. 4774, JOHN DOE, RICH-[illegible]hoe, and the real estate and improvements hereinafter described, defendants.

And also the following real estate and improvements, to wit: that certain piece or parcel of land situated in said State and county known and described as a tract of land beginning at the junction of Main street of the town of Sutterville and the Sacramento River; thence running easterly 1 mile; thence northerly ½ mile; thence westerly 1 mile
46 to said river; thence down said river to the place of beginning, in the county of Sacramento, in said State, and all and every part and parcel of the improvements on said land, defendants.

The people of the State of California send greeting to each of the above-named defendants, and all owners and claimants of the property above described.

You are hereby required to appear in an action brought against you by the above named plaintiffs in the district court of the sixth judicial district of the State of California, in and for the county of Sacramento, and to answer the complaint filed therein (a copy of which accompanies this summons) within ten days (exclusive of the day of service) after the service on you of this summons, if served withint his county,
47 and if served out of this county, but within this judicial district, within twenty days, or if served out of said district, then within forty days, or judgment by default will be taken against you.

The said action is brought to recover the sum of $113.75 due from said defendants, for the State and county taxes levied and assessed A. D. 1864, and damages, and the cost of this suit (of which tax $113.75 was so levied and assessed on the property above described, and is a

lien thereon), and to obtain a decree of the said court for the foreclosure of said lien upon said premises; that the said premises may be sold, and the proceeds applied to the payment of said taxes, damages, and costs, and to obtain execution against said defendants for the payment of the same; and also that all persons claiming any interest, either legal or equitable, in said premises may be barred and foreclosed
48 of all right, title, equity of redemption, and interest therein.

And if you fail to appear and answer said complaint as above required, the plaintiffs will take default against you, and take judgment for the said sum of $113.75, and the damages and costs aforesaid, and apply to the court for the relief demanded in the complaint.

Given under my hand and the seal of the district court of the sixth judicial district this 23d day of Feb'y, in the year of our Lord 1865.

[SEAL.] A. C. BIDWELL, *Clerk*,
By J. H. PARNELL, *Deputy Clerk*.

COUNTY OF SACRAMENTO, *ss:*

I hereby certify that the foregoing is a true copy of a summons now in my office, this day by me issued out of said court in the above-entitled cause.

49 Witness my hand and the seal of the district court of the sixth judicial district, this day of , A. D. 1865.

Clerk.

Deputy.

(Endorsed:) State and county taxes of 1864. No. . District court 6th judicial district. The people of the State of California vs. R. H. Vance, Doe No. 4774, John Doe, Richard Roe, et al. Summons. Filed this 23d day of Feb'y, A. D. 1865. A. C. Bidwell, clerk, by J. H. Parnell, D. C.

50 STATE OF CALIFORNIA,
County of Sacramento:

In district court, sixth judicial district.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
R. H. VANCE, DOE No. 4774, JOHN DOE, RICHARD ROE, and the real estate and improvements hereinafter described, defendants.

The People of the State of California, by M. M. Estee, district attorney of the county of Sacramento, complain of Doe No. 4774, John Doe and Richard Roe, whose real names are to plaintiffs unknown, and who are therefore sued by the fictitious names last aforesaid, and R. H. Vance, and also the following described real estate and improvements, to wit: The certain piece or parcel of land, situated in said county and State, known and described as a tract of land beginning at the junction of Main street of the town of Sutterville and the
51 Sacramento River; thence running easterly 1 mile; thence northerly ½ mile; thence westerly 1 mile to said river; thence down said river to the place of beginning, in the county of Sacramento, in said State, and all and every part and parcel of the improvements on

said land, and for cause of action say that between the first Monday in March and the first Monday in August, A. D. 1864, in the county of Sacramento, in the State of California, P. R. Beckley, then and there being county assessor of said county, did duly assess and set down upon an assessment roll all the property, real and personal, in said county subject to taxation; that said assessment roll was afterwards submitted to the board of equalization of said county, and was by said board duly equalized, as provided by law; that the said R. H. Vance was then and there the owner of, and that there was duly assessed to him the
52 above described real estate, improvements upon real estate, and certain personal property, to wit:

Said real estate valued and so assessed at	$3,500
Said improvements valued and so assessed at	$
Said personal property valued and so assessed at	$

And each of the other persons defendants herein have and claim a title to and interest in said real estate, improvements upon real estate and personal property, and are liable for, and in duty bound to pay, the taxes herein specified; that upon said property there has been duly levied for the fiscal year A. D. 1864—

A State tax of	$43 75
A county tax of	$70 00
Swamp land, district No. 2, tax	$
Amounting in the whole to	$113 75

All of which is due and unpaid; of which amount $113.75 was duly assessed and levied against the real estate aforesaid and
53 $ against the improvements aforesaid.

Wherefore said plaintiffs pray judgment against said persons, defendants herein, for the sum of $113.75, and separate judgment against said real estate and improvements for the sum of $113.75, and that said real estate and improvements be sold to satisfy such separate judgment, and that all the interest and claim of each person aforesaid, defendants herein, and all persons claiming any interest in said real estate or improvements be forever barred and foreclosed; and that said taxes and all costs subsequent to the assessment of said taxes, and all costs and expenses of this suit, be paid in gold and silver coin of the United States; and plaintiffs pray for such other judgment as to justice belongs.

District Attorney of Sacramento County.

54 STATE OF CALIFORNIA,
County of Sacramento, ss:

M. M. Estee, being duly sworn, on oath says that he has read the foregoing complaint and believes it to be true.

M. M. ESTEE,
Dist. Attorney.

Subscribed and sworn to before me this 23 day of Feb., A. D. 1865.
A. C. BIDWELL, *Clerk*,
By J. H. PARNELL, *D. C.*

On a tract of land beginning at junction of Main street of the town of Sutterville & the Sacramento River, thence running easterly 1 mile,

thence northerly ½ mile, thence westerly 1 mile, to said river; thence down said river to the place of beginning:

Assessed value of real estate	3,500
" " " improvements	$——
" " " personal property	$——
Total	$3,500

55 SYNOPSIS OF TAX.

State tax	$43 75
County tax	70 00
Swamp land district, No. 2	$——
	113 75

STATE OF CALIFORNIA,
City & County of Sacramento, ss:

I hereby certify that the above and foregoing is a correct transcript from the assessment roll of the year 1864, of the real property, improvements thereon, and personal property assessed to R. H. Vance, and that the State and County taxes therein were levied, as appears in detail on said assessment roll, and that the same is not marked paid upon said assessment roll.

In witness whereof I have hereunto set my hand, and affixed the
56 seal of office, this 20th day of Feb'y, A. D. 1865.

[SEAL.] JOSIAH HOWELL,
County Auditor.

(Endorsed:) D. C., No. 4601. State and county tax 1864, No. 4774. The People of the State of California vs. R. H. Vance et al. Complaint filed February 24th, 1865. A. C. Bidwell, clerk, by J. H. Parnell, D. C. M. M. Estee, district attorney.

STATE OF CALIFORNIA,
County of Sacramento:

In the district court of the sixth judicial district.

THE PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
R. H. VANCE, DOE, 4774. JOHN DOE, RICH'D ROE, and the real estate in the county of Sacramento particularly known and described as a tract of land beginning at the junction of Main street of the town of Sutterville and the Sacramento River; thence running east-
57 erly 1 mile; thence northerly ½ mile; thence westerly 1 mile, to said river; thence down said river to the place of beginning, defendants, to recover $113.75 in gold and silver coin of the United States of America for State & county taxes levied on and delinquent for the fiscal year 1864.

This cause coming on to be heard this 23d day of October, A. D. 1865,

and it appearing to the satisfaction of the court that all owners and claimants of the property above described have been duly summoned to answer the complaint herein, and have made default in that behalf; and it further appearing to the satisfaction of the court that the court commissioner, to whom said cause was heretofore duly referred, has ascertained the amount of taxes due herein, and the amount of dues of each officer, and has duly reported by drafting this form of decree, specifying therein, as hereinafter set forth, the amount of said taxes, the amount of attorney's fees, and the gross amount of all other costs; and the court being fully advised in the premises, finds:

District att'y's fees	$17 06
Clerk's fees	5 20
Court tax	1 14
Sheriff's fees	
Court com'n costs	6
Witness fees	
Printing costs	7 50
Auditor's fee	75
58	$37 65

First. That all the taxes sued for in said complaint were legally levied and assessed.

Second. That all of said taxes are due and unpaid.

Third. That of said taxes the sum of $113.75 was levied and assessed to, on and against the above mentioned and described real estate.

Fourth. That the taxes due and unpaid amount to the sum of $113.75, and that there is also due thereon 15% per cent., amounting to $17.06, district attorney's fees, and that the gross sum of all other costs amount to $20.59.

Fifth. That of said sum of $113.75 so due and unpaid the sum of $113.75 is a lien on and against the aforementioned and described real estate.

Sixth. That each of the personal defendants sued herein by either his real or a fictitious name, has an interest in and to said property antagonistic to the lien of plaintiffs.

Seventh. It is therefore ordered, adjudged, and decreed by the court that plaintiffs do have and recover from and against the said defendants, including said real estate, the sum of one hundred & thirteen $\frac{75}{100}$ ($113.75) dollars in gold and silver coin of the United States of America, together with costs of suit taxed at $37.65, and all accruing costs.

And it is further ordered and decreed that the above-described real estate, or so much thereof as shall be necessary, be sold by the
60 sheriff of said county, at a public vendue, in accordance with the statute in such case made and provided, and the proceeds applied to the payment of the judgment and all costs, and that the purchaser in due time be let into possession thereof.

A true copy.

(Signed) I. H. McKUNE,
District Judge.

Witness my hand and seal of office this 9th day of Nov'r, 1865.

[SEAL.] A. C. BIDWELL,
Clerk.

By J. H. PARNELL,
Deputy Clerk.

STATE OF CALIFORNIA,
Sacramento County:

SHERIFF'S OFFICE, *Dec.* 18, 1865.

This certifies that I received the within decree on the 23d day
61 of November, 1865, and after due notice according to law, I did, on this 18th day December, 1865, in front of the court-house door, sell to L. M. Lincoln, who was the highest bidder, all of the property

within described, for the sum of one hundred & seventy-five & $\frac{40}{100}$ dollars in gold coin.

JAMES McCLATCHY,
Sheriff,
By JAS. E. SMITH,
Deputy Sheriff.

I received on the within decree, Jan. 27, 1866, as follows:

Tax	$113 75
Dis't att'y fee	17 06
Court cost	10 34
Commissioner's fees	6 00
Printing	7 50
Auditor's fee	75
	$155 40

M. M. ESTEE,
Dis't Att'y.
By A. C. FREEMAN,
Deputy.

(Endorsed:) Tax suit No. 4601. Decree No. 3074. First series.

62 In the district court, sixth judicial district. The people of the State of California vs. R. H. Vance, Doe 4774. Copy of decree and order of sale. Filed Feb'y 14th, 1866. A. C. Bidwell, clerk. By . D. C. Clerk's accruing costs $4.00.

The following certificate signed by the clerk of said district court and no other or different was annexed to the said copies, viz:

STATE OF CALIFORNIA,
County of Sacramento, ss:

63 I, E. D. Shirland, county clerk and ex-officio clerk of the district court of the sixth judicial district of the State of California, in and for the county of Sacramento, do hereby certify the annexed copies of complaint, summons, affidavit of publication, commissioner's report and decree, with the endorsements thereon, to be true and correct, as the same now remain of record and on file in my office;, and I further certify that the same constitute all the proceedings had in the within entitled cause, wherein the People of the State of California were plaintiffs, and R. H. Vance, Doe 4774, and John Doe and Rich'd Roe were defendants.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 17th day of December, 1866.

[SEAL.]
E. D. SHIRLAND,
Clerk of the Court aforesaid,
By JOHN H. PARNELL,
Dep. Clk.

[Internal rev. stamp, 5 cts. Cancelled.]

64 The said plaintiff objected to the reading in evidence of the said documents, for that the same were irrelevant, immaterial, and incompetent. And he stated, among others, the following special grounds of objection:

First. That it does not appear that the court ever acquired jurisdic-

tion of the subject-matter therein mentioned, upon which it is claimed said 6th district court adjudicated, nor of any of the persons therein named or described or designated. That the summons therein does not appear to have been served. But that it does appear from said documents that said court did not acquire such jurisdiction; and that the summons in said suit therein entitled was not served as required by law.

65 Second. That if said documents constituted the exemplification of a complete record and judgment roll in said action therein entitled, it could not be introduced without a copy of the delinquent list and assessment roll therein mentioned and referred to (the defendants not proposing to offer the same).

Third. That the suit is not against the plaintiff in this cause; and the judgment therein cannot affect the rights of any one not a party to it. That fictitious names can only be used to represent and designate unknown owners, when the assessment is made to unknown owners.

Fourth. It appears from these documents that there was no judgment roll in said suit.

66 Fifth. There is no copy of a judgment among said papers, but only a copy of a copy.

For these and other defects manifest upon the face of said papers the plaintiff insisted they were not admissable in evidence, but the court overruled each and all said objections, and held and decided that the said papers constituted a duly authenticated copy of the record of a judgment in rem against the lands therein described, and that they were sufficient to authorize the sale of the said premises. And they were thereupon read to the jury; and the said plaintiff then and there duly excepted to the said ruling and decision.

The defendants then offered in evidence a certified copy of a
67 paper which was in the same words and figures, and had the same endorsements thereon, and was in every respect exactly like the paper among those lost aforesaid, which were read to the jury, endorsed "copy of decree and order of sale," to which was attached the following certificate and no other or different, viz:

STATE OF CALIFORNIA,
County of Sacramento, ss:

I, E. D. Shirland, clerk of the district court of the sixth judicial district, in and for the county of Sacramento, State of California, hereby certify that the above and foregoing is a full, true, and correct copy of the original decree and order of sale in the aforesaid entitled cause, as the same now remains of record and on file in the office of said court.

68 Witness my hand, with the seal of our said court affixed, at the city of Sacramento, the county seat of the county of Sacramento, this 8th day of March, A. D. 1867.

[SEAL.]

E. D. SHIRLAND,
Clerk of the Court aforesaid,
By JOHN H. PARNELL,
Deputy Clerk.

[5 cts. stamp.]

To the reading in evidence of which the plaintiff objected on the ground that the same was irrelevant, immaterial, and incompetent. And the court overruled the said objection, and the same was thereupon read to the jury, to which ruling and decision the said plaintiff then and there duly excepted.

within described, for the sum of one hundred & seventy-five & $\frac{40}{100}$ dollars in gold coin.

JAMES McCLATCHY,
Sheriff,
By JAS. E. SMITH,
Deputy Sheriff.

I received on the within decree, Jan. 27, 1866, as follows:

Tax	$113 75
Dis't att'y fee	17 06
Court cost	10 34
Commissioner's fees	6 00
Printing	7 50
Auditor's fee	75
	$155 40

M. M. ESTEE,
Dis't Att'y.
By A. C. FREEMAN,
Deputy.

(Endorsed:) Tax suit No. 4601. Decree No. 3074. First series.
62 In the district court, sixth judicial district. The people of the State of California vs. R. H. Vance, Doe 4774. Copy of decree and order of sale. Filed Feb'y 14th, 1866. A. C. Bidwell, clerk. By . D. C. Clerk's accruing costs $4.00.

The following certificate signed by the clerk of said district court and no other or different was annexed to the said copies, viz:

STATE OF CALIFORNIA,
County of Sacramento, ss:

63 I, E. D. Shirland, county clerk and ex-officio clerk of the district court of the sixth judicial district of the State of California, in and for the county of Sacramento, do hereby certify the annexed copies of complaint, summons, affidavit of publication, commissioner's report and decree, with the endorsements thereon, to be true and correct, as the same now remain of record and on file in my office; and I further certify that the same constitute all the proceedings had in the within entitled cause, wherein the People of the State of California were plaintiffs, and R. H. Vance, Doe 4774, and John Doe and Rich'd Roe were defendants.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 17th day of December, 1866.

[SEAL.]
E. D. SHIRLAND,
Clerk of the Court aforesaid,
By JOHN H. PARNELL,
Dep. Clk.

[Internal rev. stamp, 5 cts. Cancelled.]

64 The said plaintiff objected to the reading in evidence of the said documents, for that the same were irrelevant, immaterial, and incompetent. And he stated, among others, the following special grounds of objection:

First. That it does not appear that the court ever acquired jurisdic-

tion of the subject-matter therein mentioned, upon which it is claimed said 6th district court adjudicated, nor of any of the persons therein named or described or designated. That the summons therein does not appear to have been served. But that it does appear from said documents that said court did not acquire such jurisdiction; and that the summons in said suit therein entitled was not served as required by law.

65 Second. That if said documents constituted the exemplification of a complete record and judgment roll in said action therein entitled, it could not be introduced without a copy of the delinquent list and assessment roll therein mentioned and referred to (the defendants not proposing to offer the same).

Third. That the suit is not against the plaintiff in this cause; and the judgment therein cannot affect the rights of any one not a party to it. That fictitious names can only be used to represent and designate unknown owners, when the assessment is made to unknown owners.

Fourth. It appears from these documents that there was no judgment roll in said suit.

66 Fifth. There is no copy of a judgment among said papers, but only a copy of a copy.

For these and other defects manifest upon the face of said papers the plaintiff insisted they were not admissable in evidence, but the court overruled each and all said objections, and held and decided that the said papers constituted a duly authenticated copy of the record of a judgment in rem against the lands therein described, and that they were sufficient to authorize the sale of the said premises. And they were thereupon read to the jury; and the said plaintiff then and there duly excepted to the said ruling and decision.

The defendants then offered in evidence a certified copy of a

67 paper which was in the same words and figures, and had the same endorsements thereon, and was in every respect exactly like the paper among those lost aforesaid, which were read to the jury, endorsed "copy of decree and order of sale," to which was attached the following certificate and no other or different, viz:

STATE OF CALIFORNIA,
County of Sacramento, ss:

I, E. D. Shirland, clerk of the district court of the sixth judicial district, in and for the county of Sacramento, State of California, hereby certify that the above and foregoing is a full, true, and correct copy of the original decree and order of sale in the aforesaid entitled cause, as the same now remains of record and on file in the office of said court.

68 Witness my hand, with the seal of our said court affixed, at the city of Sacramento, the county seat of the county of Sacramento, this 8th day of March, A. D. 1867.

[SEAL.]

E. D. SHIRLAND,
Clerk of the Court aforesaid,
By JOHN H. PARNELL,
Deputy Clerk.

[5 cts. stamp.]

To the reading in evidence of which the plaintiff objected on the ground that the same was irrelevant, immaterial, and incompetent. And the court overruled the said objection, and the same was thereupon read to the jury, to which ruling and decision the said plaintiff then and there duly excepted.

The defendants then offered in evidence a certificate of purchase in the words and figures following, to wit:

CERTIFICATE OF PURCHASE.

69 THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
R. H. VANCE, DOE 4774, JOHN DOE, RICH'D ROE.

District court, sixth judicial district, held in and for the county of Sacramento, State of California.

[5 cents stamp cancelled.]

I, James McClatchy, sheriff of the county of Sacramento, State of California, do as such sheriff hereby certify that by virtue of a judgment and decree of sale for State and county taxes levied for the fiscal year 1864, rendered and docketed in the district court of the sixth judicial district of said State, held in and for the county of Sacramento on the 23d day of October, 1865, in favor of the people of the State of California and against R. H. Vance, Doe 4774, John Doe, Rich'd Roe, and the piece or parcel of land known and described as a tract
70 of land beginning at the junction of Main street of the town of Sutterville and the Sacramento River; thence running easterly 1 mile; thence northerly ½ mile; thence westerly 1 mile to said river; thence down said river to the place of beginning; which said judgment is against said real estate for the sum of one hundred thirteen $\frac{75}{100}$ dollars, together with $41.65 costs, at my reception of the process and all accruing costs; the whole payable in gold coin by me received on the 23d day of Nov., 1865, commanding me to levy upon the above mentioned and described property, and to cause so much thereof as was necessary to be sold to the purchaser who would take the smallest quantity thereof and pay the judgment and all costs, I did on the 23d day of Nov., 1865, levy upon the said property, and after due notice, according to law, I have this day sold at public auction in front of the
71 court-house door of said county, at the hour of eleven o'clock a. m., for the sum of one hundred and seventy-five $\frac{42}{100}$ dollars in gold coin, to L. M. Lincoln, all of the above described property; and said sum of one hundred and seventy-five $\frac{42}{100}$ dollars has been paid to me in gold coin by said L. M. Lincoln, and is the whole consideration by him paid for the last mentioned and described property, and entitles him to this certificate of purchase, which said purchase will become absolute at the expiration of six months, and the purchaser then be entitled to a conveyance unless the property is redeemed according to law.

Given under my hand as sheriff aforesaid, at office in the city of Sacramento, this 18th day of December, 1865.

JAMES McCLATCHY,
Sheriff of the County of Sacramento,
By J. R. DRAY,
Deputy Sheriff.

To the reading of which in evidence the plaintiff objected on
72 the ground that the same was irrelevant and incompetent; and

as one of the special grounds of objection, that the sale did not appear to have been made according to the directions of the decree recited in it, or the statute concerning the same.

And as a special ground of objection, he stated, among others, that no return of the sheriff making the certificate had been proven. The court overruled the said objections, and the said certificate was read to the jury. To which rulings and decision the plaintiff then and there duly excepted.

The said defendants then offered in evidence a sheriff's deed in words and figures following:

(To the reading of which in evidence the plaintiff objected on the grounds that the same was irrelevant, immaterial, and incompetent, for the reasons hereinbefore stated as to the other documents offered
73 in evidence by the defendants, especially that no return of the sheriff had been proven.)

The court overruled each and all said objections, and the defendants read said deed to the jury; and the plaintiff then and there duly excepted to said ruling and decision.

Said sheriff's deed was in the words and figures following, to wit:

To all whom these presents may come, I, James McClatchy, ex-sheriff of the county of Sacramento, send greeting:

Whereas by a decree and order of sale to me directed, issued out of the clerk's office of the district court of the sixth judicial of the State of California, in and for the county of Sacramento, upon a judgment recovered in said court on the 23d day of October, A. D. 1865, in favor of the People of the State of California and against R. H.
74 Vance, Doe 4774, and that piece or parcel of land situated in the county of Sacramento, State of California and described as a tract of land beginning at the junction of Main street, of the town of Sutterville, and the Sacramento River; thence running easterly one mile; thence northerly half a mile; thence westerly one mile to said river; thence down said river to the place of beginning, for the sum of one hundred thirteen $\frac{76}{100}$ dollars for the State and county taxes, levied for the year 1864, and $41 $\frac{65}{100}$ costs of suit and accruing costs, and by me received on the 23d of November, 1865, I was commanded to sell so much of the real estate hereinbefore described as should be necessary to pay said sums, as by the said decree and order of sale reference thereto being had, will more fully appear;

And whereas, after receipt of said decree and order of sale by me, and before the day of the return thereof, I did, by virtue of
75 the said decree and order of sale, give the legal notice of the time and place of such sale, according to the statute in such case made and provided, and upon the day of such sale, to wit, the 18th day of December, 1865, did sell the land hereinafter more particularly described, to L. M. Lincoln, for the sum of one hundred seventy-five $\frac{42}{100}$ dollars, he being the highest bidder, and that being the largest sum bid for said property at such sale; and whereas six months have elapsed since the date of such sale, and the time for redemption having fully expired, and no person was redeemed said premises, or any portion thereof: Now, therefore, know ye that I, James McClatchy, the ex-sheriff aforesaid, by virtue of the hereinbefore mentioned decree and order of sale, and of the statute in such case made and provided, and in consider-
76 ation of the aforesaid sum of one hundred and seventy-five $\frac{42}{100}$ dollars to me in hand paid by the said L. M. Lincoln, the receipt whereof is hereby acknowledged, have granted, bargained, and sold,

and by these presents do grant, bargain, and sell unto the said L. M. Lincoln, heirs and assigns forever, all that piece or parcel of land lying and being in the county of Sacamento, and State of California, and known and described as a tract of land beginning at the junction of Main street, of the town of Sutterville, and the Sacramento River; thence running easterly one mile; thence northerly half mile; thence westerly one mile, to the said river; thence down said river to the place of beginning, together with the appurtenances, to have and to hold the said land and premises, and every part and parcel thereof, with the appurtnances, unto the said L. M. Lincoln, heirs and assigns
77 forever, as fully and as absolutely as I, the said James McClatchy, as ex-sheriff aforesaid, and under the authority aforesaid, might, could, or ought to convey and sell the same.

In witness whereof, I, James McClatchy, have, as such ex-sheriff, hereunto set my hand and seal the 21st day of June, 1866.

[SEAL.] JAMES McCLATCHY,
Sheriff of the County of Sacramento.

[Rev. stamp 50 cts. cancelled.]

STATE OF CALIFORNIA,
County of Sacramento, ss:

On this twenty-first day of June, A. D. one thousand eight hundred and sixty-six, before me Samuel Cross, a notary public in and for said county, duly commissioned and sworn, personally appeared the within named James McClatchy, ex-sheriff of the county of Sacramento,
78 whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the individual described in and who executed the said annexed instrument, and acknowledged to me that he, as ex-sheriff aforesaid, executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[NOTARIAL SEAL.] SAMUEL CROSS,
Notary Public.

The plaintiff also before the said deed was read to the jury stated as a further special objection to said deed, that it did not show or state that the sale was made in accordance with the directions of the decree by the authority of which it was claimed to have been
79 made; and that it does not appear from anything offered in connection with said deed, that said sale was so made, or as directed by the statute, but that the contrary appears from said deed and the recitals therein. Which objections were each and all decided not to be well taken, and pl'ff duly excepted.

The plaintiff then offered to prove by competent evidence that the said property mentioned in said documents offered in evidence by the said defendants was not assessed according to law for the fiscal year named in said documents. To which the said defendants objected on the grounds that the record introduced by them was conclusive of that question. And the court sustained the said objection and the plaintiff duly excepted to said ruling and decision.

80 The plaintiff also offered to prove by competent evidence that the said defendants, except the defendant L. M. Lincoln, were in the exclusive possession and enjoyment of the said premises before the beginning of the year 1864, and had so continued to enjoy the same ever since then. The defendants objected to the said evidence for the

reason that the same was irrelevant and incompetent. And the court sustained said objection. To which ruling the plaintiff then and there duly excepted.

The court thereupon at the request of the defendants instructed the jury to find a verdict in favor of the said defendants. To which instruction so given the plaintiff then and there duly excepted, because he says the instruction should be that the plaintiff is entitled to a verdict.

81 In testimony whereof and of the truth of the foregoing bill of exceptions, I, the said judge, before whom said cause was tried, have hereunto set my hand and seal this 13th day of April, A. D. 1867.

(Signed) [SEAL.] M. P. DEADY, *Judge.*

(Endorsed:) Filed April 16th, 1867. Geo. C. Gorham, cl'k, per H. F. Lardner, dep't.

82 *Order dismissing motion for new trial.*

At a stated term of the circuit court of the United States of America, for the district of California, held at the court-room in the city of San Francisco, on the 25 day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Present, the honorable M. P. Deady, district judge.

IRA G. FRENCH
vs.
THOS. EDWARDS.

And now at this day came the parties by their respective attorneys, and counsel for plaintiff stating that he declined to file case stated on motion for new trial, it is therefore, on motion of att'y for def't's, ordered that said motion for new trial be dismissed, and the same is hereby dismissed.

83 *Judgment.*

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

Now, at this day, this cause coming in to be heard in its regular course upon the calling of the calendar, and a jury of twelve men being duly empanelled, and the parties being present by their respective attorneys, and the testimony and arguments of counsel being heard, and the jury charged touching the law, the action was submitted to the jury, who, after due deliberation, had return, a verdict in the words and figures following, to wit:

"We, the jury, find for the defendants."

Now, therefore, by reason of the law and the premises, and it appearing that, as against all other defendants herein, this cause has been heretofore determined, it is now here considered by the court that

84 plaintiff, Ira G. French, take nothing by his action aforesaid as against defendants W. T. Carothers, J. T. Carothers, Samuel Oneste, Antonio de Silva, David Moril, Samuel Oness, Leonard Hoyt, Jefferson Lake, W. W. Crouse, L. M. Lincoln, Andrew Carothers, Thomas Edwards, and R. Sherburn, are not guilty of the trespass and ejectment as charged against them in manner and form as the said plaintiff hath within complained against them. And that, as against them,

the said defendants aforesaid, the action herein be, and the same is hereby, dismissed; and that the said defendants go hence without day, and that they do have and recover from the plaintiff their costs and disbursements in this action to be taxed.

(Signed) DEADY, *Judge.*

(Endorsed:) Filed Apl. 26, 1867. Geo. C. Gorham, clk., p. John O. Wheeler, dep.

85 United States circuit court for the dist. of Cal'a. Regular February term, 1867.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET ALS.

This cause coming on to be heard in its regular order upon the calendar, and the parties being present by the attorneys, and a jury of twelve men being duly sworn to try the same; and this action being upon motion of plaintiff continued for this term as against W. Tilden, and the answer of Guiseppe Falteuth, one of the defendants herein, having been heretofore stricken out by order of the court for cause shown; and the defendants Frank Davis, Edward Paine, D. E. Hastings, Mrs. E. Lake, Mrs. Buckmaster, John Cooke, Mrs. S. Hall, H. B.
86 Gales, Huntoon, F. Wendrech, J. Crowell, Charles Deventa, O. Bostini, Chapere Perez, Austin Otto, and Samuel Ames having failed to answer as required, and the default of said defendants having, on motion of plaintiff, been duly noted and entered, and an order for judgment against the said defendants granted and allowed:

Wherefore, by reason of the law and the premises, it is now considered by the court that plaintiffs do have and recover of and from the defendants Guiseppe Falteuth, Frank Davis, Edward Paine, D. E. Hastings, Mrs. E. Lake, Mrs. Buckmaster, John Cooke, Mrs. S. Hall, H. B. Gates, Huntoon, F. Wendreck, J. Crowell, Charles Deventa, O. Bostini, Chapere Perez, Austin Otto, and Samuel Ames, and as against them the said defendants the possession of all that tract or parcel of land lying and being situate in the town of Sutter, county of Sacramento, State of California, bounded on the north,
87 east, and south by lands formerly granted by the Mexican Govenment to one John A. Sutter, and on the west by the Sacramento River, commencing at the corner of Main and Water streets, of said town of Sutter, at the east bank of said Sacramento River, running thence in a northerly direction up and along said river, one-half of a mile; thence in an easterly direction, one mile; thence southerly at right angles, one-half mile, and thence westerly at right angles, one mile to the place of beginning, being one-half of the original surveyed town of Sutterville, formerly so-called, now called Sutter, and being the same tract of land conveyed by said John A. Sutter to one L. W. Hastings, on the 30th of November, 1849, said premises being a part of the land granted to the said John A. Sutter under the name of "New Helvetia," and containing 320 acres.

And it is further considered that plaintiff do have judgment
88 against said defendants for the sum of damages, and for rents and profits and for costs of suit to be taxed.

(Signed) DEADY, *Judge.*

(Endorsed:) Filed Ap'l 26, 1867. Geo. C. Gorham, cl'k, p. John O. Wheeler, dep.

89 *Supplemental Answer.*

United States circuit court, district of California.

IRA G. FRENCH
vs.
THOMAS EDWARDS, L. M. LINCOLN, & OTHERS.

The defendants in the above-entitled action, for a supplemental answer therein, allege:

That on the 23d day of October, A. D. 1865, a judgment was duly & regularly recovered in the district court of the sixth judicial district of the State of California in and for the county of Sacramento in favor of the people of said State as plaintiff, and against one R. H. Vance and the land and premises described in the complaint in *complaint in* this action, and to recover which said action is brought, as defend-
90 ants, for the sum of one hundred fifty-five and $\frac{42}{100}$ dollars damages and costs for delinquent taxes of said State and county levied for the year 1864.

That a decree and order of sale were duly issued out of the clerk's office of said court upon said judgment & directed to the sheriff of said county & by him received on the 23d day of November, 1865, commanding said sheriff to sell so much of the real estate before mentioned as should be necessary to pay the said judgment.

That, after the receipt of the said decree and order of sale, and before the day of the return thereof, the said sheriff did give legal notice of the time and place of such sale according to the statute in such case made and provided; and in pursuance of such notice said sheriff did, on the day of sale named therein, to wit, the 18th day of December, 1865, at the time and place therein mentioned, sell, at public
91 auction, the said premises to this defendant, L .M. Lincoln, for the sum of one hundred seventy-five dollars, the amount of said judgment and costs, that being the best bid therefor, and the said land so sold being the smallest quantity that any purchaser offered to take and pay such judgment and costs.

That afterwards and since the commencement of this action and the filing and service of the former answer of this defendant in this action, the said sheriff, James McClatchy, by virtue of the before-mentioned judgment, decree, & order of sale, and of the statute in such case made and provided, and in pursuance of said sale, and in consideration of the said sum of one hundred & seventy-five $\frac{42}{100}$ dollars then and there paid by the said defendant Lincoln to said sheriff, *said sheriff* did, on the 11th day of June, 1872, by deed, under his hand and seal,
92 sell and convey to the said Lincoln the said premises to recover which this action is brought.

And said defendants further answering, refer to their several original answers on file in said action and make the same a part of this their supplemental answer in the same manner as if said original answer were repeated herein.

Dated August 26th, 1872.

DELOS LAKE,
Defendants' Attorney.

(Endorsed:) Filed 11 September, 1872. L. S. B. Sawyer, clerk.

93 *Findings.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH, PLAINTIFF, *vs.* THOMAS EDWARDS ET AL. } Findings.

This action came on regularly for trial at the September term of this court in 1872, before this court without a jury, a trial by jury having been waived by the written stipulation of the parties, according to the provisions of the statute. The respective parties introduced their evidence and made their proofs, and after duly considering the same and the argument of counsel thereon, the court finds from the evidence the following

FACTS:

94 First. Robert H. Vance was on the first day of March, 1862, the owner and seized in fee of the premises in dispute and described in the complaint in this action. And said Vance on said 1st day of March, 1862, duly conveyed the same premises to the plaintiff by deed of conveyance bearing date and duly acknowledged and recorded on said last named day. And by the said last named deed of conveyance the plaintiff became seized in fee of all said premises, and plaintiff remained so seized and the owner in fee of said premises until the execution of the instrument in writing hereafter set out in these findings made on the 9th day of January, 1863.

Second. On the 9th day of January, 1863, the plaintiff and the defendants Jefferson Lake, W. W. Crouse, Richard Sherburn,
95 Leonard Hoyt, with others, executed under their hands and seals and delivered an instrument in writing in the words and figures following, to wit:

This indenture, made the ninth (9) day of January, one thousand eight hundred and sixty-three, between Jefferson Lake, W. W. Crouse, Daniel E. Hastings, Richard Sherburn, William Heisker, F. Windrich, Frank Davis, Leonard Hoyt, settlers on land hereinafter described, and Robert H. Vance, Irah G. French, and George L. Gibson, Sutter claimants of said land, parties of the first part, and Edward Martin, Frances E. Lynch, of the city and county of San Francisco, parties of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar to each of them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and con-
96 veyed, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns, forever, all and each of our right, title, and interest in and to the following tract or piece of land, situate, lying, and being in the county of Sacramento, State of California, and bounded and described as follows, viz: commencing at a point on the Sacramento River in a right line with the center of Main street, in the town of Sutterville, as the same is laid down on a map of said Sutterville made by C. W. Coots, and dated July 1st, 1850, and filed in the office of the county recorder of Sacramento County on the 8th day of August, 1850, and running thence in an easterly direction along the centre of said Main street to a point one mile from the place of beginning, thence at right angles northerly one-half mile, and thence at right angles westerly to the
97 Sacramento River, and thence southerly along the Sacramento River to the place of beginning, together with all and singular the hereditaments and appurtenances thereunto belonging, or in any way or manner appertaining, and the reversion and reversions, remainder

and remainders, rents, issues and profits thereof, and also all the estate, right, title, and interest, property, possession, claim and demand, whatsoever, as well in law as in equity, of the parties of the first part of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances, except the buildings thereon, to have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns, forever, as joint tenants, upon trust, never'less, and to
98 and for the uses, interests and purposes hereinafter limited, described and declared, that is to say, upon trust to hold and convey the same in lots of such size and for such prices as shall be directed and designated by a committee of four persons or a majority thereof, said committee to be selected as follows, to wit: Two members thereof by the parties hereto of the first herein designated "settlers," one member thereof by the parties hereto, who are designated as "Sutter claimants," and one member thereof by the said railroad company now being formed, and to be incorporated for the purpose of constructing, owning, and maintaining a railroad leading from said Sutterville, and connecting with the Sacramento Valley Railroad. The proceeds of sales are to be distributed and paid immediately upon the receipt thereof by the said parties of the second part as follows: Eight twenty-fourths
99 thereof shall be paid to the said railroad company to be incorporated as aforesaid, when and so *so* soon as the said railroad shall have been completed, three twenty-fourths thereof to the said parties hereto who are herein designated as "settlers" and who are in possession and entitled to possession (under settlers' rules) of the several lots sold as aforesaid, and the remaining thirteen twenty-fourths thereof to the parties hereto who are designated as "Sutter claimants," and who may hold the Sutter title to the several lots so sold as aforesaid; provided, however, if there shall be conflicting claims between said Sutter claimants to said moneys, the part of the moneys belonging to said claimants as aforesaid, shall be held by the said party of the second , until such conflicting claims shall have been settled and determined by arbitrators, compromise, or
100 legal proceedings, when the same shall be paid to such of the said Sutter claimants as shall be thus determined to be the owner of the Sutter title to the lot or lots about which such dispute or conflicting claims shall have been or arisen; or if any dispute shall arise between any of the said settlers as to the possession of the said lots so sold, or any of them, then the three twenty-fourths of the said money arising from the lots the possession of which shall be in dispute as aforesaid shall be held by said party of the second part until said dispute is determined as hereinbefore provided as to the Sutter claimants' disputes, & when such disputes are so settled then the said money shall be paid to the person or persons so found and determined to be entitled thereto; and provided further that when any lot or lots are sold in possession of which there are no settlers who are parties to this deed sixteen twenty-
101 fourths of the proceeds of such sales shall be paid to the Sutter claimants, and the other eight twenty-fourths to the said railroad company; and provided further, that if the said parties to this deed who are herein designated as parties of the first part, and the railroad company (the words part and the railroad company were interlined in the original deed in pencil mark, Jared Irvin, county clerk & ex-officio county recorder, by Wm. T. Higgins, deputy,) shall fail to select their four members of the said committee within five days after the commencement of the said railroad in good faith, or if such committee so selected as aforesaid shall fail to agree as to the directions to be given to the said parties of the second part as to the said sales with-

in thirty days after the commencement in good faith of said rail-
102 road as aforesaid, then said parties of the second part shall proceed to sell the said lands at public auction, duly noticed and fairly conducted, for the best prices they can obtain for the same, in such sized lots and in such locations as they shall deem for the best interest of all the parties interested; provided that they shall not sell more than one-twentieth part of said lands at any one sale, nor make more than one sale in a month; and provided further, that no conveyances shall be made by the said party of the second part until the said railroad shall have been commenced in good faith, as aforesaid, and this conveyance shall be void if such railroad shall not be built within one year from the date of these presents. Provided, however, that if the iron for said railroad shall be lost or detained on its transit from
103 the Atlantic States to this State by any accident, then the time for completing said railroad shall be extended to two years instead of one year. Provided further, that the said railroad company at any time after the commencement in good faith to build said railroad may select a block of land, as the same are laid out on said map of the town of Sutterville, for the use of said railroad company, which block so selected shall be conveyed to said railroad company on said company's paying therefor the sum of two thousand dollars. Provided, however, that if any portion of said land shall have been sold and conveyed by the said parties of the second part before the completion of the said railroad, the title to such part so sold shall not be affected by the failure to complete said railroad as aforesaid, but the portion of
104 the purchase price of said parts of the land sold which is hereinbefore provided to be paid to the said railroad company shall be paid, one-half to said settlers and the other half to the said Sutter claimants, if the said railroad is not completed within two years as aforesaid. Provided further, that all sales and conveyances herein provided to be made, and all and every act and thing whatsoever herein provided to be done by the said parties of the second part, shall and may be done by the said Edward Martin, unless he shall die or remove from the State or be unable to act, in which case alone the said Francis E. Lynch shall perform all the acts and exercise all the powers herein provided to be done and exercised by the said parties of the second part.

In witness whereof, we have hereunto set our hands and seals the day and year first above written.

105

JEFFERSON LAKE. [SEAL.]
W. W. CROUSE. [SEAL.]
RICHARD SHERBURN. [SEAL.]
D. E. HASTINGS. [SEAL.]
LEONARD HOYT. [SEAL.]
WILLIAM KEISKER. [SEAL.]
his
FRANK × DAVIS. [SEAL.]
mark.
F. WINDRICK. [SEAL.]
ROBT. H. VANCE. [SEAL.]
IRA G. FRENCH, [SEAL.]
By JOHN REYNOLDS,
His Attorney in Fact.
GEORGE L. GIBSON, [SEAL.]
By JOHN REYNOLDS,
His Attorney in Fact.

In presence of—
GEORGE A. KING.

STATE OF CALIFORNIA,
County of Sacramento, ss:

On this eighteenth day of February, 1863, before me, Prescott Robinson, a notary public in and for said county, personally appeared George A. King, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness
106 thereto, who, being by me duly sworn, deposed and said that he resides in Sacramento county; that he was present and saw Jefferson Lake, Richard Sherburn, D. E. Hastings, Leonard Hoyt, William Keisker, Frank Davis, and F. Windrick, known to him to be the same persons described in and who executed the annexed instrument as parties thereto, sign, seal, and deliver the same, and that the said Jefferson Lake, Richard Sherburn, D. E. Hastings, Leonard Hoyt, William Keisker, Frank Davis, and F. Windrick, acknowledged in the presence of deponent that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned. And that he, the deponent, thereupon signed his name as a subscribing witness thereto.

In witness I have hereunto set my hand and affixed my seal of office the day and year first above written.

[SEAL.] PRESCOTT ROBINSON,
Notary Public.

107 STATE OF CALIFORNIA,
County of Sacramento:

On this eighteenth day of February, A. D. one thousand eight hundred and sixty-three, before me, Prescott Robinson, a notary public in and for said county, duly commissioned and sworn, personally appeared the within W. W. Crouse and Robert H. Vance, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the individuals described in and who executed the said annexed instrument, and acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] PRESCOTT ROBINSON,
Notary Public.

108 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this twenty-fourth day of February, A. D. one thousand eight hundred and sixty-three, before me, Albert G. Randall, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared John Reynolds, personally known to me to be the same person described in and who executed by power of attorney the annexed instrument as the attorney in fact of Ira G. French, named in this annexed instrument as a party thereto, and therein described as the party executing the same by his said attorney, and the said John Reynolds acknowledged to me that he executed the same freely and voluntarily as and for the act and deed of the said Ira G. French, and for the uses and purposes therein mentioned.

109 In witness whereof I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year last above written.

A. G. RANDALL,
Notary Public.

STATE OF CALIFORNIA,
City and county of San Francisco, ss:

On this twenty-fourth day of February, A. D. one thousand eight hundred and sixty-three, before me, Albert G. Randall, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared John Reynolds, personally known to me to be the same person described in and who executed by power of attorney the annexed instrument as the attorney in fact of George L. Gibson, named in the annexed instrument as a party thereto,
110 and therein described as the party executing the same by his said power of attorney; and the said John Reynolds acknowledged to me that he executed the same freely and voluntarily as and for the act and deed of the said George L. Gibson, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, on the day and year last above written.

[SEAL.] A. G. RANDALL,
Notary Public.

Recorded February 28th, 1863, at 12h. 30m. p. m., at request of R. H. Vance.

Third. The railroad company mentioned in said deed to Martin and Lynch was never incorporated, nor was said railroad ever commenced.

111 Fourth. The defendants who have appeared and answered in this action were in the exclusive adverse possession of the premises described in the complaint at and before the commencement of this action, holding the same adversely to the plaintiff and all other persons.

Fifth. On the trial of this action the plaintiff waived his claim for damages without prejudice.

Sixth. The value of the land in dispute is $20,000.

From the foregoing facts the court finds the following

CONCLUSIONS OF LAW.

First. The plaintiff acquired title in fee to all the premises de-
112 scribed in the complaint by the deed from Robert H. Vance to him, on the 1st day of March, 1862.

Second. That the legal title of the plaintiff was conveyed by the said deed to Martin and Lynch, on the 9th day of January, 1863, and did not revest, on failure of the conditions mentioned in said deed without a re-entry for condition broken, or other act manifesting an intention to avoid the deed on that ground; and that the legal title to said premises remained and was vested in said trustees at the commencement of this action.

Fourth. That the defendants are entitled to judgment in their favor with costs.

And it is ordered that a judgment be entered accordingly.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed October 30th, A. D. 1872. L. S. B. Sawyer, clerk, y J. F. O'Beirne, dep. cl'k.

113 *Judgment.*

In the circuit court of the United States of the ninth judicial circuit in and for the district of California.

IRA G. FRENCH
v.
THOMAS EDWARDS ET AL. } No. 235.

This cause having come on regularly for trial on the 13th day of September, A. D. 1872, being a day in the June term, 1872, of said court, before the court sitting without a jury, a trial by jury having been expressly waived by written stipulation of counsel for the respective parties, duly filed with the clerk of said court, S. O. Houghton and John Reynolds, esqs., appearing on behalf of plaintiff, and Delos Lake and J. H. McCune, esqs., on behalf of defendants, and the trial having been proceeded with upon the 17th and 18th of said Septem-
114 ber, and witnesses on behalf of plaintiff and of defendants having been sworn and examined, and the evidence having been closed, the cause, after arguments of counsel having been submitted to the court for consideration and decision, and after due deliberation the court having filed its finding in writing and ordered that judgment be entered in accordance therewith.

Now, therefore, by virtue of the law and of the finding aforesaid, it is considered by the court that the plaintiff take nothing by this action; that the defendants go hereof without day, and that the defendants do have and recover of and from Ira G. French, plaintiff, their costs in this behalf expended, taxed at three hundred and ninety-five $\frac{35}{100}$ ($395\frac{35}{100}$) dollars.

Judgment entered the 30th day of October, 1872.

L. S. B. SAWYER, *Clerk.*

115 A true copy of an original entered in the therein-entitled cause in Judgment Register C. L. No. 1, p. 552.

Attest, &c,

L. S. B. SAWYER, *Clerk.*

(Endorsed:) Filed 30 October, 1872. L. S .B. Sawyer, clerk.

116 *Demurrer to amended complaint.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS, L. M. LINCOLN, W. W. Crouse, Leonard Hoyt, Wm. T. Carothers, executor of the last will and testament of A. Carothers, deceased, R. Sherburn, Jefferson Lake, Anton de Silva, David Morrill, Samuel Onesti, & Samuel Oness, defendants.

The defendants demur to the amended complaint of the plaintiff filed herein on the 8th day of February, 1877, and for causes of demurrer assign:

I. That said amended complaint does not state facts suf-
117 ficient to constitute a cause of action.

STATE OF CALIFORNIA,
City and county of San Francisco, ss:

On this twenty-fourth day of February, A. D. one thousand eight hundred and sixty-three, before me, Albert G. Randall, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared John Reynolds, personally known to me to be the same person described in and who executed by power of attorney the annexed instrument as the attorney in fact of George L. Gibson, named in the annexed instrument as a party thereto,
110 and therein described as the party executing the same by his said power of attorney; and the said John Reynolds acknowledged to me that he executed the same freely and voluntarily as and for the act and deed of the said George L. Gibson, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, on the day and year last above written.

[SEAL.] A. G. RANDALL,
Notary Public.

Recorded February 28th, 1863, at 12h. 30m. p. m., at request of R. H. Vance.

Third. The railroad company mentioned in said deed to Martin and Lynch was never incorporated, nor was said railroad ever commenced.

111 Fourth. The defendants who have appeared and answered in this action were in the exclusive adverse possession of the premises described in the complaint at and before the commencement of this action, holding the same adversely to the plaintiff and all other persons.

Fifth. On the trial of this action the plaintiff waived his claim for damages without prejudice.

Sixth. The value of the land in dispute is $20,000.

From the foregoing facts the court finds the following

CONCLUSIONS OF LAW.

First. The plaintiff acquired title in fee to all the premises de-
112 scribed in the complaint by the deed from Robert H. Vance to him, on the 1st day of March, 1862.

Second. That the legal title of the plaintiff was conveyed by the said deed to Martin and Lynch, on the 9th day of January, 1863, and did not revest, on failure of the conditions mentioned in said deed without a re-entry for condition broken, or other act manifesting an intention to avoid the deed on that ground; and that the legal title to said premises remained and was vested in said trustees at the commencement of this action.

Fourth. That the defendants are entitled to judgment in their favor with costs.

And it is ordered that a judgment be entered accordingly.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed October 30th, A. D. 1872. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

113 *Judgment.*

In the circuit court of the United States of the ninth judicial circuit in and for the district of California.

IRA G. FRENCH
v.
THOMAS EDWARDS ET AL. } No. 235.

This cause having come on regularly for trial on the 13th day of September, A. D. 1872, being a day in the June term, 1872, of said court, before the court sitting without a jury, a trial by jury having been expressly waived by written stipulation of counsel for the respective parties, duly filed with the clerk of said court, S. O. Houghton and John Reynolds, esqs., appearing on behalf of plaintiff, and Delos Lake and J. H. McCune, esqs., on behalf of defendants, and the trial having been proceeded with upon the 17th and 18th of said Septem-
114 ber, and witnesses on behalf of plaintiff and of defendants having been sworn and examined, and the evidence having been closed, the cause, after arguments of counsel having been submitted to the court for consideration and decision, and after due deliberation the court having filed its finding in writing and ordered that judgment be entered in accordance therewith.

Now, therefore, by virtue of the law and of the finding aforesaid, it is considered by the court that the plaintiff take nothing by this action; that the defendants go hereof without day, and that the defendants do have and recover of and from Ira G. French, plaintiff, their costs in this behalf expended, taxed at three hundred and ninety-five $\frac{35}{100}$ ($395\frac{35}{100}$) dollars.

Judgment entered the 30th day of October, 1872.

L. S. B. SAWYER, *Clerk.*

115 A true copy of an original entered in the therein-entitled cause in Judgment Register C. L. No. 1, p. 552.

Attest, &c,

L. S. B. SAWYER, *Clerk.*

(Endorsed:) Filed 30 October, 1872. L. S .B. Sawyer, clerk.

116 *Demurrer to amended complaint.*

In the circuit court of the United States for the district of California.

IRA G. FRENCH, PLAINTIFF,
vs.
THOMAS EDWARDS, L. M. LINCOLN, W. W. Crouse, Leonard Hoyt, Wm. T. Carothers, executor of the last will and testament of A. Carothers, deceased, R. Sherburn, Jefferson Lake, Anton de Silva, David Morrill, Samuel Onesti, & Samuel Oness, defendants.

The defendants demur to the amended complaint of the plaintiff filed herein on the 8th day of February, 1877, and for causes of demurrer assign:

I. That said amended complaint does not state facts suf-
117 ficient to constitute a cause of action.

II. That there is no averment in said amended complaint that said plaintiff was the owner of the premises described in said amended complaint at the time of the commencement of this action, nor is there any averment that said plaintiff is now the owner thereof.

III. And the defendants demur specially to that part of said amended complaint which states damages to the amount of twenty thousand dollars, for that it does not appear that any part of said damages accrued before the commencement of this action.

IV. And they demur special' to that part of the amended complaint in which it is stated that the plaintiff is a citizen of the State of
118 New York, for it does not appear from said amended complaint that said plaintiff was so a citizen of the State of New York at the date of the commencement of this action.

V. And they further demur specially to that part of said amended complaint which says that the value of the rents and profits of said premises since the 1st day of March, 1862, has been the sum of $2,500.00 per annum, for that it does not appear that the same accrued within three years next before the filing of said amended complaint, and that so much thereof as did not accrue within three years is barred by section of the code of civil procedure of the State of California.

Wherefore the defendants demand judgment for their costs.

JOHN H. McKUNE &
JOHN W. ARMSTRONG,
Att'ys for Def'ts.

119 (Endorsed:)

Service by copy admitted this 24 day of February, 1877.
JOHN REYNOLDS,
Att'y for Pl'ff.

Filed Febr'y 26th, 1877.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep'y Cl'k.*

120 *Order overruling demurrer.*

At a stated term of the circuit court of the United States of America for the district of California, held at the court room in the city of San Francisco on Monday, the 5th day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

Present, the honorable Lorenzo Sawyer, circuit judge.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

In this case the demurrer of the defendants to the plaintiff's amended complaint coming on to be heard, and the same having been submitted to the court for decision, and the court having duly considered the same, it is ordered that said demurrer be and the same is hereby
121 overruled, except so far as it relates to the third paragraph thereof, in which it is averred that the plaintiff is a citizen of the State of New York. And as to said paragraph the said demurrer is sustained with leave to the plaintiff to amend the same by inserting herein after the word "is" and before the words "a citizen" the words "and was at the commencement of this action." And also by striking out the word "are" before the words "all citizens," and inserting in-

stead thereof the words "were at the commencement of this action." And that said amendment be made by filing such amendment without re-engrossment of the complaint. And it is further ordered that the defendants have leave to answer said complaint within days.

I hereby certify that the foregoing is a full, true and correct copy of an original order made and entered in the above entitled action.

122 Attest my hand and seal of said circuit court, this 7th day of October, A. D. 1878.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

123 *Order dismissing cause as to Sarah W. Edwards, &c.*

At a stated term of the circuit court of the United States of America for the district of California, held at the court room in the city of San Francisco, on Friday the 28th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Lorenzo Sawyer, circuit judge.

IRA G. FRENCH,
vs.
SARAH W. EDWARDS, ADM'R'X OF THE ESTATE of Thomas Edwards deceased.

By consent of the parties, it is ordered that this action be and it is hereby dismissed as against the defendant Sarah W. Edwards, administratrix of the estate of Thomas Edwards, deceased, and the de-

124 fendant Jefferson Lake, without prejudice and without costs.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled action.

Attest my hand and seal of said circuit court, this 7th day of October, A. D. 1878.

[SEAL.] L. S. B. SAWYER,
Clerk,
By J. F. O'BEIRNE,
Deputy Clerk.

125 *Order that default of deft. D. Morrell be entered.*

At a stated term of the circuit court of the United States of America, for the district of California, held at the court room in the city of San Francisco, on Friday the 27th day of September, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Lorenzo Sawyer, circuit judge.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

The demurrer of the defendants to the amended complaint having been on the 5th day of March, A. D. 1877, overruled, and time having been granted defendants to answer to said amended complaint, and the defendant David Morrell having failed to answer thereunto.

126 Now, therefore, on motion of S. L. Rogers, esq., of counsel for plaintiff, it is ordered that the default of said defendant for failure to answer thereto be, and the same is hereby, entered.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled action.

Attest my hand and seal of said circuit court, this 7th day of Oct., A. D. 1878.

[SEAL.] L. S. B. SAWYER,
Clerk,
By J. F. O'BEIRNE,
Deputy Clerk.

127 *Order that mandate be spread upon the minutes.*

At a stated term of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city of San Francisco, on Wednesday, the fifth day of June, A. D. 1872.

Present, honorable Lorenzo Sawyer, circuit judge.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

On motion of John Reynolds, esq., it is ordered that the mandate of the Supreme Court of the United States herein be filed and spread upon the minutes of this court, and that the cause proceed.

(Seal of the Supreme Court U. S.)

UNITED STATES OF AMERICA, *ss:*

128 The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of California, greeting:

Whereas lately in the circuit court of the United States for the district of California, before you or some of you, in a cause between Ira G. French, plaintiff, and Thomas Edwards, W. T. Carothers, J. T. Carothers, Samuel Onesti, Antonio de Silva, David Morel, Samuel O. Ness, Leonard Hoyt, Jefferson Lake, W. W. Crouse, L. M. Lincoln, Andrew Carothers, and R. Sherburn, defendants, wherein the judgment of the said circuit court entered in said cause, on the 26th day of April, A. D. 1867, is in the following words, viz: "It is now here considered by the court that the plaintiff, Ira G. French, take nothing by his action aforesaid as against the defendants W. T. Carothers, J. T. Carothers, Samuel
129 Onesti, Antonio de Silva, David Morel, Samuel O. Ness, Leonard Hoyt, Jefferson Lake, W. W. Crouse, L. M. Lincoln, Andrew Carothers, Thomas Edwards, and R. Sherburn, and that they are not guilty of the trespass and ejectment as charged against them in manner and form as the said plaintiff hath within complained against, and that as against them, the said defendants aforesaid, the action herein be and the same is hereby dismissed, and that the said defendants go hence without day, and that they do have and recover from the plaintiff their costs and disbursements in this action to be taxed," as by the inspection of the transcript of the record of the said circuit court, which was brought

into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of December, in the year of
130 our Lord one thousand eight hundred and seventy-one, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be and the same is hereby reversed, with costs, and that the said plaintiff Ira G. French recover against the said defendants one hundred dollars and fifty cents for his costs herein expended, and have execution therefor.

And it is further ordered that this cause be and the same is hereby remanded to the said circuit court, with directions to award a new trial.

6th May, 1872.

You therefore are hereby commanded that such execution and further proceedings be had in said cause in conformity to the opinion and
131 judgment of this court as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy-one.

Costs of plaintiff: Clerk, 80.50; attorney, 20—100.50, taxed by D. W. Middleton, clerk of the Supreme Court of the United States.

(Endorsed:) Filed 5 June, 1872. L. S. B. Sawyer, clerk.

A true copy.
Attest, &c., L. S. B. SAWYER, *Clerk.*

132 *Order that mandate be filed and spread on the minutes.*

At a stated term, to wit, the July term, 1875, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room in the city of San Francisco on Monday, the 6th day of September, in the year of our Lord one thousand eight hundred and seventy-five.

Present, honorable Lorenzo Sawyer, circuit judge.

IRA G. FRENCH
vs.
THOMAS EDWARDS ET AL.

On motion of John Reynolds, esq., on behalf of plaintiff, ordered motion for judgment herein continued to Thursday, the 9th instant. And, on like motion, it is ordered that the mandate of the Supreme Court of the United States herein be filed and entered in the minutes.

133 (Seal of the U. S. Supreme Court.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the circuit court of the United States for the district of California, greeting:

Whereas, lately, in the circuit court of the United States for the dis-

trict of California, before you, or some of you, in a cause between Ira G. French, plaintiff, and Thomas Edwards, W. T. Carothers, Samuel Onesti, Antonio de Silva, David Morel, Samuel O'Ness, Leonard Hoyt, Jefferson Lake, W. W. Crouse, L. M. Lincoln, Andrew Carothers, and R. Sherburn, defendants, wherein the judgment of the said circuit court, entered in said cause on the 30th day of October, A. D. 1872, is in the following words, viz: "It is considered by the court that the plaintiff take nothing by this action; that the defendants go hereof without day, and that the defendants do have and recover of and from Ira
134 G. French, plaintiff, their costs in this behalf expended, taxed at three hundred and ninety-five $\frac{25}{100}$ dollars," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-four, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be and the same is hereby reversed with costs, and that the said plaintiff, Ira G. French, recover against the said defendants one hundred
135 and twenty five dollars and seventy-five cents for his costs herein expended and have execution therefor.

And it is further ordered that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein in conformity with the opinion of this court.

11th January, 1875.

You therefore are hereby commanded that such execution and further proceedings be had in said cause in conformity with the opinion and judgment of this court as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the sixteenth day of July, in the year of our Lord one thousand eight hundred and seventy-five.

136 Costs of plaintiff: clerk, $105.75; attorney, 20.00—$125.75, taxed by D. W. Middleton, clerk of the Supreme Court of the United States.

137 UNITED STATES OF AMERICA,
District of California, ss:

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify that the foregoing and annexed papers (embraced in Volume Two) are full, true, and correct copies of—

1st. The answer of G. Faltuth.
2d. Replication.
3d. Replication to plea in abatement.
4th. Bond for costs.
5th. Findings.
6th. The answer of Tilden.
7th. The answer of W. T. and J. T. Caruthers.
8th. The answer of Thomas Edwards.
9th. The answer of A. Caruthers.

10th. The answer of J. Lake.
11th. Order that the answer of defendant G. Falteuth be stricken out.
12th. Order of trial; order of trial.
13th. Bill of exceptions.
14th. Order dismissing motion for new trial.
15th. Judgment.
16th. Judgment.
17th. Supplemental answer.
18th. Findings.
138 19th. Judgment.
20th. Demurrer to amended complaint.
21st. Order overruling demurrer.
22d. Order dismissing cause as to Sarah W. Edwards.
23d. Order that the default of defendant D. Morrell be entered.
24th. Order that mandate be filed, &c.
25th. Order that mandate be filed, &c.

And that the same, together with copies of papers embraced in volume one in the therein entitled cause, are a true copy of the record and of all proceedings in said cause, and together constitute the return to the writ of error from the Supreme Court of the United States to the said circuit court in the therein entitled cause.

Witness my hand and the seal of said circuit court this tenth day of February, A. D. 1881.

[SEAL] L. S. B. SAWYER,
Clerk U. S. Circuit Court with Judicial Circuit District of California.

(Indorsement on cover:) No. 516. L. M. Lincoln, W. W. Crouse, Leonard Hoyt, R. Sherburn, Antonio de Silva, Samuel O'Ness, & Samuel O'Nesti, plaintiffs in error, vs. Ira G. French. California C. C. U. S. Addition to record filed 14th March, 1881.

Supreme Court of the United States.

No. 265.

OCTOBER TERM, 1881.

L. M. LINCOLN, W. W. CROUSE, LEONARD HOYT, R. SHERBURN, ANTONIO DE SILVA, SAMUEL O'NESS & SAMUEL O'NESTI,

Plaintiffs in Error,

vs.

IRA G. FRENCH,

Defendant in Error.

Argument for Plaintiffs in Error.

J. H. McKUNE,
A. T. BRITTON,
J. H. McGOWAN,
Att'ys for Plaintiffs in Error.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1882.

Supreme Court of the United States.

October Term, 1881.

L. M. LINCOLN, W. W. CROUSE, LEONARD HOYT, R. SHERBURN, ANTONIO DE SILVA, SAMUEL O'NESS, AND SAMUEL O'NESTI, Plaintiffs in Error, *vs.* IRA G. FRENCH, Defendant in Error.	No. 265.

Argument for Plaintiffs in Error.

STATEMENT.

On the 8th day of November, 1866, (more than fifteen years ago,) the defendant in error commenced suit in ejectment against the plaintiffs in error and a number of other parties, in the circuit court of the United States for the northern district of California.

The complaint, which was filed in court on that day as commencement of suit, avers that on the 1st day of March, 1862, the plaintiff (defendant in error) was the owner in fee simple and entitled to the possession of certain real estate situated in the town of Sutter, county of Sacramento, State of California—described as being one-half mile wide and one

mile long, the west end being bounded by the Sacramento river—and "being one-half of the original survey town of "Sutterville, formerly so called, now called Sutter, and be- "ing the same tract of land conveyed by said John A. Sut- "ter to one L. W. Hastings, on the 30th of November, 1849; "said premises being a part of the land granted to the said "John A. Sutter under the name of 'New Helvetia,' and "containing 320 acres." The complaint also contained the usual averments of unlawful entry and withholding of said premises by the defendants. (See Record, fols. 1 to 4.)

This original complaint embraced thirty-one defendants. By amendments to the pleadings, by various decisions of the courts rendered herein, and by the thinning process of death, the defendants below have now been reduced to seven in number.

Various answers by the several defendants were filed to this original complaint. The complaint was then amended and other answers filed. These pleadings were voluminous, and are set out in the record, covering the first thirty-two pages. There is no question but they were sufficient to put in issue the title of the plaintiff and his right of possession.

The case was first tried on the second day of April, 1867, before a jury, and a general verdict rendered for the defendants. (Addition to Record, fols. 35 to 39.)

The principal question on this trial seems to have related to the validity of a certain tax title by virtue of which defendant L. M. Lincoln claimed to own the premises in dispute. Upon the rulings of the court, and the charge to the jury relating to this tax title, the case was brought to this court on a bill of exceptions, the judgment below reversed, and the case sent back for a new trial. (13 Wall., 506.)

The case was again tried below, without a jury, in September, 1872. (Add. Rec., fol. 93.) In his finding of facts on that trial the judge finds in substance: (1) That on the

first of March, 1862, Rob't H. Vance was the owner in fee of the lands in controversy, and that on that day he conveyed the same to Ira G. French, the defendant in error. (2) That on the 9th day of January, 1863, (less than three years before the bringing of this action,) the plaintiff, French, and his grantor, Rob't H. Vance, with a number of others, most of whom are, or were, defendants in this suit, and are designated as "settlers," joined in a deed of all the disputed lands to Edward Martin and Francis E. Lynch, as trustees, said trustees being charged in the conveyance with the sale and final disposal of all the lands. The deed provided that the sale of the lands was to be made in lots or parcels, and the size of such lots or parcels, and the price at which the same were to be sold, were to be fixed by a committee of four persons, also provided for in the deed. The proceeds from the sales were to be divided between the various grantors and a certain railroad company thereafter to be organized, in proportions and ratios fixed in said trust deed. The judge further finds that the railroad company mentioned in said trust deed was never incorporated, and that the road was never built.

Also that the defendants who had appeared and answered in the action were in the exclusive adverse possession of the premises described in the complaint at and before the commencement of this action, holding the same adversely to the plaintiff and all other persons.

The Court then finds, as conclusions of law: First, the plaintiff acquired title in fee to all the premises described in the complaint by the deed from Rob't H. Vance to him on the 1st of March, 1862.

Second. That the legal title of the plaintiff was conveyed by the said deed to Martin and Lynch on the 9th of January, 1863, and did not revert, on failure of the conditions mentioned in said deed without a re-entry for condition

broken, or other act manifesting an intention to avoid the deed on that ground; and that the legal title to said premises remained and was vested in said trustees at the commencement of this action. And judgment was accordingly entered for the defendants. (Add. Rec., fols. 93 to 113.)

From this decision the plaintiff again appealed to this Court, and the judgment below was again reversed, (21 Wall., 147,) on the ground that the Court below did not find *as one of the facts in the case* that the title was still in the trustees, and *eight years* having elapsed from the violation of the conditions of the deed to the time of commencing suit, the re-conveyance would be presumed.

After further amendments to the pleadings, the case was again tried before the Court, without a jury, Oct. 7, 1878, and judgment rendered for the plaintiff, from which the defendants have now appealed. (Rec., fols. 344 to 350.)

The opinion and findings of the Court are quite lengthy, and fully given in the printed record, and we shall only state such portions here as we desire to discuss, and to which we take exceptions, and shall give them in the order we propose to consider them.

I.

"FINDINGS OF FACT."

(*a.*) That on the 9th day of January, 1863, the plaintiff, Ira G. French, Rob't H. Vance, and George L. Gibson, (French's grantors,) William Riesker, Jefferson Lake, W. W. Crouse, Daniel E. Hastings, Richard Sherburne, F. Windrick, Frank Davis, and Leonard Hoyt, (the last seven being defendants in this suit,) "made, executed, and delivered their "certain deed of trust" of the premises in question to Edward Martin, and Francis E. Lynch, as trustees. The conditions of said deed were, in brief: (1.) That said trustees

were to sell the land in lots or parcels; the size of such lots or parcels, and the price at which they should be sold, first to be fixed by a committee of four, provided for in the deed. (2.) The proceeds of such sales were to be distributed among the grantors and a certain railroad company, thereafter to be incorporated, in certain proportions named therein. (3.) No conveyances were to be made by said trustees until said railroad should have been commenced in good faith; and further conditioned that such road should be built in one year from the date of the trust-deed, unless "the iron "for railroad should be lost or detained in its transit from "the Atlantic States by any accident. Then the time for "completing said railroad should be extended to two years "instead of one year."

Said deed was duly recorded February 28, 1863.

"The railroad company mentioned in said deed to Martin and Lynch was never incorporated, nor was said railroad ever commenced, *and the said Martin and Lynch did not, in fact, nor did either of them, execute or deliver any instrument of conveyance reconveying, or purporting to reconvey to the said French any part of the land so conveyed to them as trustees, at any time either before or after this action was commenced.*" (Fols. 324 to 334.)

(*b.*) "And on or about the 27th day of September, 1867, "said Ira G. French made and delivered to said R. H. Vance "his deed, whereby he, said French, did remise, release, and "quit-claim unto said Vance all his right, title, and interest "in and to the land described in said agreement, which is "the land described in the complaint herein, and in the deed "from said Vance to said French, of date March 1, 1862." (Fol. 247.)

"And on or about the 17th day of February, 1871, said "R. H. Vance conveyed all his right, title, and interest in "and to said premises to John Reynolds, the attorney for

"said plaintiff, and is now the successor in interest of said "plaintiff and said Vance as to such legal title as they had; "and said Reynolds was the attorney for said Vance and said "plaintiff in this action and in the action brought and de- "termined in said District Court." (Fol. 323.)

(*c.*) "That on or about the first day of March, 1862, said "R. H. Vance, by deed, conveyed all his right, title, and "interest in the land in controversy to Ira G. French, the "plaintiff, which deed was then duly acknowledged and "recorded," (fol. 218;) and that at the same time said French made and delivered to Vance an instrument under seal, wherein the execution and delivery of above-mentioned deed from said Vance to said French is set out, and wherein it is further stated that "it is understood and agreed to "between the said parties that the said land was deeded by "the said Vance to the said French as security for the pay- "ment of a note of eighteen thousand two hundred and "forty-one and 82–100 dollars, dated February 1, 1862." Also, that "it is further understood that the said French "agrees to endorse on said note from time to time all "moneys received by him for sales made of any of said "land." Also, that "it is further agreed that as soon as "the said note is paid, either from the sales of said land or "in any other way, so that said French receives the amount "of said note and interest, he binds himself, his heirs, ex- "ecutors, administrators, to redeed to said Vance all the "lands first deeded to said French by deed of March 1, 1862, "excepting such lands as may have been sold by said "French, and the proceeds of said sales applied on the said "Vance note." (Fol. 246.)

"And on or about the 27th day of September, 1867, "(this action was commenced November 8, 1866,) said Ira G. "French made and delivered to said R. H. Vance his deed, "whereby he, said French, did remise, release, and quit-

" claim unto said Vance all his right, title, and interest in " and to the land described in said agreement, which is the " land described in the complaint herein, and in the deed " from said Vance to said French of date March 1, 1862." (Fol. 247.)

" That on the 4th day of November, 1867, said Rob't H. " Vance, the successor in interest of said plaintiff in and to " the land in controversy, commenced his action (in eject- " ment) in the District Court of the 6th judicial district, in " and for the county of Sacramento, and State of Califor- " nia, against said defendants, L. M. Lincoln, W. W. " Crouse *et al.*" (Fols. 247 and 248.)

That said Vance averred in his declaration that on the 27th day of September, 1867, he was the owner in fee simple, " and seized in his own right in fee simple absolute," of the premises in question. And, with the usual averments of a declaration in ejectment, prays that he may have possession, and judgment for the restitution of said land and premises, etc. (Fols. 249 to 252.)

The answer of the defendants (who are the present plaintiffs in error) traversed the allegations of the complaint, and set forth, for a separate answer, the suit of French commenced in the Circuit Court of the United States, November 8, 1866, against the same parties defendant, wherein the plaintiff, as grantee of said Vance, claimed the title and right of possession to these same premises, and wherein the final judgment was for the defendants; and that the interest of said French was transferred to said Vance after such final judgment, and that Vance had no other right or title to the premises than that so transferred to him by French, (Fols. 252 to 256.)

And that upon the trial of the said cause of Vance *vs.* Lincoln *et al.*, the Court found as conclusions of law " that, " as against the defendants, W. T. Carothers, J. T. Ca

" rothers, Samuel Onesta, A. G. Silva, Leonard Hoyt, Jef-
" ferson Lake, W. W. Crouse, L. M. Lincoln, Andrew Ca-
" rothers, Thomas Edwards and R. Sherburne, the plaintiff
" is estopped from maintaining this action by the verdict and
" judgment entered in said Circuit Court in the said action of
" French *vs.* Edwards *et al.*, and that said verdict and judg-
" ment is a bar to said plaintiff's action herein." And that judgment was accordingly entered for the defendants. (Fol. 314.)

That said Vance appealed from this last-named judgment to the Supreme Court of the State of California, which court in 1869 affirmed the judgment below, and that the same remains in full force and effect. (Fol,. 323, also 38 Cal., 586.)

(*d.*) That on the 6th day of July, 1850, Thos. J. Henly, O. McNight, and S. C. Hastings commenced suit against L. W. Hastings, (through whom French claimed title,) Henry Cheever, and Peter Wimmer. That on the same day the said defendants—Hastings and Wimmer in person, and Cheever by his attorneys—confessed judgment, which was accordingly entered. On the 26th day of August, 1850, execution was issued on this judgment and placed in the hands of Peter F. Ewer, coroner and acting sheriff, and on the same day he levied on certain lots and blocks lying in the town of Sutter, also on certain other lots of land in said town of Sutter owned by said Wimmer. But before sale of the property the coroner and acting sheriff returned the execution with the following endorsement:

" Received by notes on Barton Lee, secured by mortgage,
" of Henry Cheever, one of the defendants, satisfaction of
" the within execution (except costs not p'd) Oct. 1, 1850.
" HENLY & HASTINGS.

" Returned Oct. 12, 1850.
" P. DUNLAP,
" *Clerk.*"

(Fols. 158 to 167.)

That on the 20th of March, 1851, there was filed in the case the following assignment:

"Assignment: This is to certify that we, Thos. J. Henly "and S. C. Hastings, for and in consideration of the sum "of ten thousand dollars, to us in hand paid, the receipt "whereof is hereby acknowledged, have assigned and trans- "ferred, and by these presents do assign and transfer, to "Henry Cheever a certain judgment, rendered in the Dis- "trict Court of Sacramento county, in favor of us, the said "Henly and Hastings, against L. W. Hastings, Henry "Cheever, and Peter L. Wimmer, the said judgment being "the only one rendered in our favor against the said par- "ties in the said court, which said judgment was paid and "satisfied as to us by the said Henry Cheever, a surety upon "the claim upon which said judgment was founded.

"S. C. HASTINGS,
"THOS. J. HENLY."

(Fol. 167.)

That thereupon, to wit, on the 25th day of June, 1853, a second execution was issued on said judgment and placed in the hands of A. D. Patterson, sheriff, who on the 15th day of July, 1853, levied on all the right, title, and interest of said L. W. Hastings, in and to the lands in question, and that after due notice the said land was sold by said sheriff at public sale to John B. Millikin, he being the highest bidder, and that on the 8th day of April, 1854, said Sheriff Patterson executed and delivered to said Milliken a sheriff's deed of the premises in due form. (Fols. 168–174.)

(*e.*) That by deeds made on the 25th of May, 1853, and the 22d of April, 1853, Robert H. Vance, (the grantor of the defendant in error,) Henry A. Breed, and W. K. Weston conveyed the lands in question to Abram T. Melvin, R. G. Sneath, and R. H. Vance, as trustees of the Sutter Land Company. (Fols. 182–185.) The Sutter Land Company

was not incorporated, but bound together by certain articles of association. (Fols. 199–209.)

That on the 8th day of September, 1858, one N. S. Pettit commenced an action in the District Court of the 6th judicial district in and for the county of Sacramento, in said State of California, against two of the trustees and certain other individuals composing the so-called Sutter Land Company, alleging their indebtedness to him in the sum of $250.00, and that said defendants were partners and shareholders in and composed the Sutter Land Company. (Fols. 189–191.)

To which complaint the defendants, by their attorney, Gilbert M. Cole, answered, confessing the indebtedness as set forth in plaintiff's complaint. The answer also sets out the articles of association of the company, and various other mattters indicating its financial embarrassment, and declares that the defendants "are willing and extremely anxious to "have the affairs of said company wound up, and the prop- "erty sold in pursuance of a decree of the honorable court," and its debts paid, and the balance, if any, distributed *pro rata* among the shareholders; and a prayer to that end is added to the answer. (Fols. 192–210.)

That on the 8th day of December, 1858, the case was submitted to the Court for decision. The Court found the facts in said case to be as follows: "That the defend- "ants were justly indebted to the plaintiff, Pettitt, for ser- "vices rendered and money laid out and expended by plain- "tiff for the defendants at their request, and interest in the "sum of $290.42;" and thereupon, on the 18th day of December, 1858, a judgment was duly entered in said action in favor of the said plaintiff, N. S. Pettitt, and against all of said defendants, for said amount of $290.42. And that on the 17th day of September, 1859, after legal notice, the sheriff, in obedience to an execution issued in above case,

sold the land in question to G. L. Gibson for $400, and on the 21st of April, 1862, made Gibson a deed of the same; and on the 8th day of January, 1866, said Gibson conveyed to the defendant in error (Ira G. French) whatever interest he, said Gibson, then had by virtue of said sheriff's deed. (Fols. 210–216.)

(*f*.) The court below further finds that defendant, Lincoln, at the time of commencing suit, only claimed to be in possession of sixty acres of the land in controversy, but in fact he was *not in possession* of said sixty acres, and that the same was vacant and unoccupied at the commencement of the said action. (Fols. 334 and 335.)

(*g*.) The tax deed under which Lincoln entered was on a former appeal held to be invalid. (13 Wall., 506.)

The suit resulting in the tax sale was against the land (G. and R. H. Vance) to subject the land itself to sale for the payment of the tax, and the proceeding fully complied with the statute. (Fols. 218 *et seq.*)

The sheriff's deed, held to be invalid, is set out at folios 234 *et seq.*

Pending this action below, the sheriff selling the land at tax sale had leave to make an amended return and a deed in accordance with the facts, the first deed containing misrecitals. (Fols. 238–245.)

II.

CONCLUSIONS OF LAW.

Upon the foregoing facts, with others, the Court found, as conclusions of law, that the plaintiff below was entitled to the possession of all the premises described in the complaint, (except certain lots and blocks, which are given,) and to judgment for possession thereof.

That he was entitled to judgment against the defendant,

L. M. Lincoln, for $330; that being the value of the rents and profits of the part of said premises found to be in his possession, as stated in the findings of fact designated in said findings as "tule land," and containing sixty acres.

That he was entitled to judgment against the various other defendants for various sums, as rents and profits, and entitled to his costs against all the defendants, except A. Carothothers, Wm. P. Carothers, Thos. Carothers, Sarah W. Edwards, administratrix, &c., and Joseph Lake, as to which defendants a dismissal should be entered without costs.

ASSIGNMENTS OF ERROR.

To all of which conclusions of law, based upon said findings of fact, and the judgment entered in pursuance thereof, the plaintiffs in error hereby except, and allege especially as errors the following:

1st. The legal title to the premises in question at the commencement and during the progress of the suit was not in the defendant in erorr, but was in the trustees, Martin and Lynch; hence the Court erred in its judgment.

2d. In 1867, and long prior to the last trial, the defendant in error had conveyed the land in controversy to R. H. Vance, his trustor or mortgagor, and at the time of trial had not even color of title or right of possession; hence the Court erred in its judgment.

3d. The judgment of the District Court, affirmed by the Supreme Court of California, in favor of the plaintiffs in error and against Rob't H. Vance (then holding the title on which the defendant in error now depends) in a suit in ejectment, brought by said Vance, was a bar to this action; hence the Court erred in its judgment.

4th. Defendant in error claims title to the land in controversy through L. W. Hastings, but the interest of said Hast-

ings had passed to John B. Milliken by sheriff's deed prior to said Hastings' attempted conveyance, through which defendant in error claims; hence the Court erred in its judgment.

5th. Defendant in error claims title to the land in controversy through G. L. Gibson. The pretended sheriff's sale under which said Gibson purported to have purchased said lands did not pass any title to him; hence the Court erred in its judgment.

6th. The Court found as a fact that defendant, (below,) L. M. Lincoln, was not in possession of any portion of the premises in controversy at the time of commencing said suit; hence the judgement of the Court as to said Lincoln was error.

7th. The amended tax deed to L. M. Lincoln, of the said land, was valid and sufficient to fix the title and right of possession in him; hence the Court erred in its judgment.

8th. French, the defendant in error, received judgment for damages up to the time of the last trial, but having conveyed his interest long prior to that time; the Court erred in such judgment.

III.

ARGUMENT.

The trust deed to Martin and Lynch.

We contend that when this suit was commenced, and during the whole of its progress up to the present time, French, the plaintiff below, had no legal title, and hence was incapable of maintaining ejectment against parties in possession, and holding adversely.

Whatever title he had formerly held he had conveyed to Martin and Lynch as trustees. There had been no recon-

veyance, and French up to this time has never been in possession.

When this case was last before this court (21 Wall., 147) it was urged by French, who was then the appellant, that owing to the lapse of time and the duty of the trustees to reconvey, that their reconveyance should be presumed. This was the only point then made, and the one on which the decision below was reversed and the case sent back for a new trial.

Justice Swayne, in delivering the opinion of the Court, states that three things must concur to warrant the presumption of a reconveyance: (1.) It must have been the duty of the trustee to convey. (2.) There must be sufficient reason for the presumption. (3.) The object of the presumption must be the support of a just title. And the Court adds that "the case must be clearly such that a court "of equity, if called upon, would decree a reconveyance;" and that "the present case is within these categories."

The learned judge finds from the record of the case, as then before him, (1,) that it was the duty of the trustees, Martin and Lynch, to reconvey the premises in question to French; (2,) that *eight* years had elapsed from the time the condition set forth in the deed of trust had been violated up to the time of commencing suit; (3,) that the just and equitable title was in French.

The record from which these conclusions were drawn was both insufficient and erroneous. It stated, as a *conclusion* of *law*, that the trustees had not reconveyed, where the present record finds it *as a fact*. It gave the date of commencing suit November 30, 1872, when in fact it was November 8, 1866. It will also be difficult to deduce, from the present full and accurate record, the conclusion that previous to the making of the trust deed to Martin and Lynch the complete

title to the lands in controversy was in French. Hence, the case is not embarrassed by the decision in 21 Wall.

(*a.*) The legal title was outstanding at the time suit was commenced, and no entry on the part of plaintiff below had been made as for condition broken or any other act done by him equivalent thereto. Only one year and ten months, or, at most, two years and ten months, had elapsed from the time when the trustees could have reconveyed. Hence, the plaintiff could not maintain ejectment.

The rule of law in actions of ejectment is thus stated in 1. Chit. Pl., 212, (13 Am. Ed.:)

"The lessor of the plaintiff must also have a strict *legal* "right; a mere equitable and beneficial interest, without the "legal title, will not suffice, and the doctrine that the legal "estate cannot be set up at law by a trustee against his "*cestui que trust* no longer prevails. But when trustees "*ought* to convey to the beneficial owner, it will after the "lapse of many years, and under certain circumstances, be "left to the jury to presume that they have conveyed accord-"ingly; and so when the beneficial occupation of the estate "by the possessor, under equitable title, induces a fair pre-"sumption that there has been a conveyance of the legal "estate to such possessor. *But when the facts of the case* "*preclude such presumption, the party having only its* "*equitable interest cannot prevail in a Court of law.*"

The plaintiff in ejectment must show a strict legal title, and the defendant, without connecting himself therewith, may show that it is outstanding in a trustee. Fenn *vs.* Holme, 21 How., 481; Watkins *vs.* Holeman, 16 Pet., 25-59; Lessee of Smith *vs.* McCann, 24 How., 398; San Felipe Mining Co. *vs.* Belshaw, 49 Cal., 655; Cranmer *vs.* Porter, 41 Cal., 462; Moore *vs.* Tice, 22 Cal., 514; Talbert *vs.* Hopper, 42 Cal., 397; Howard *vs.* Railway Co., 101 U. S., (11 Otto,) 837; Foster *vs.* Mora, 98 U. S., (8 Otto,) 425; Lessee of Cooper *vs.* Galbraith, 3 Wash. C. C., 546; Carpen-

ter *vs.* Montgomery, 13 Wall., 480; Emeric *vs.* Penniman, 26 Cal., 119; Clark *vs.* Lockwood, 21 Cal., 220; O'Connell *vs.* Dougherty, 32 Cal., 458; Hartley *vs.* Brown, 46 Cal., 201; Estalla *vs.* Murphy, 19 Cal., 272; May *vs.* Taylor, 6 M. & Gr., 261; Doe *vs.* Wroot, 5 East., 132; Gibson *vs.* Winter, 5 B. & Ad., 96; Roe *vs.* Head, 8 Tenn. R., 118; Rowe *vs.* Rowe, 1 H. & Bl., 446; Doe *vs.* Wharton, 8 Tenn. R., 2; Stewart *vs.* Dutton, 39 Ill., 91; Russell *vs.* Irwin, 38 Ala., 44; Connelly *vs.* Doe, 8 Blackf., 320; Nixon *vs.* Porter, 38 Miss., 401; Robinson *vs.* Campbell, 3 Wheat., 212; Raynor *vs.* Timerson, 46 Barb., 518; Roe *vs.* Baxter, 33 Ga., 81; Walace *vs.* Swinton, 64 N. Y., 188; Goulding *vs.* Clark, 34 N. H., 148; Bagnell *vs.* Broderick, 13 Pet., 436–450; Strother *vs.* Lucas, 6 Pet., 762; Gilmer *vs.* Poindexter, 10 How., 257–267; Carson's Lessee *vs.* ———, 2 Wash. C. C. R., 33; Thompson *vs.* Lyon, 33 Mo., 219; Eells *vs.* Day, 4 Conn., 95; Cox *vs.* Walker, 26 Me., 504; Fitzpatrick *vs.* Fitzpatrick, 13 Gray, 400; Walker *vs.* Keynett, 32 Iowa, 524; Heard *vs.* Baird, 40 Miss., 793; Moody *vs.* Farr, 33 Miss., 192; Peck *vs.* Newton, 46 Barb., 173; Edward *vs.* Miller, 4 Heisk., 314; Crawford *vs.* Green, 1 How., (D.,) 464; Mordecai *vs.* Parker, 3 Denio, 426; Canoy *vs.* Troutman, 7 Iredell, 155; Mathews *vs.* McPherson, 65 N. C., 189; Taylor *vs.* King, 6 Mumf., 358; Dyson *vs.* Bradshaw, 23 Cal., 528.

(*b.*) All actions at law to protect the trust property must be brought in the name of the trustee, but the *cestui que trust* may control the action. If the trustee refuses to allow his name to be used a court of equity will compel him to do so. 2 Perry on Trusts, § 520; Tyler *vs.* Houghton, 25 Cal., 26.

(*c.*) Can any presumption of reconveyance by Martin and Lynch be indulged in the face of the ascertained and established fact that *they did not reconvey?* The court below, in

its opinion, (5 Sawyer, 269; also see record, p. 25, fols. 128–129,) says: "As to the Martin and Lynch trust, I regard the "decision in this case, reported in 21 Wal., 150, as indi- "cating the opinion of the Supreme Court to be that the "presumption arising upon the facts stated is an indisputa- "ble or conclusive presumption." The Court adds that it has upon the testimony, &c., found the fact, upon the evidence, that no reconveyance was actually executed, yet declares it should act upon the view that the presumption was conclusive, even against the fact.

This seems rather a remarkable deduction from the opinion of this Court on the former hearing of this case. The court, in that opinion, used this language: "If it had been "one of the facts found by the Court below that the title "was in the trustees the case would have presented a different aspect," citing Goodlittle *vs.* Jones, 7 Tenn. Rep., 43; Roe *vs.* Reed, 8 Tenn. Rep., 122, and Mathews *vs.* Wood's Lessee, 10 Gill and Johns, 456.

And in this same case, in the 13 Wal., 506, the court says: "Presumptions are indulged to supply the place of "that which is not apparent."

In Nieto *vs.* Carpenter (21 Cal., 489) Chief-Justice Field says: "Presumptions are only indulged to supply the ab- "sence of facts. There can be no presumptions against ascer- "tained and established facts."

Wharton, in his work on evidence, (vol. 2, sec. 1358, 1st ed.,) states the rule thus: "It need scarcely be added that "the presumption of such conveyances is rebutable by "counter-proof." Also see Taylor *vs.* Watkins, 26 Texas, 688; Miller *vs.* VanTassel, 24 Cal., 465–'6; Best on Presumptions, 14,112; and Perry on Trusts, secs. 350–354. The latter authority (sec. 354) states the rule of law thus: "But there must always be sufficient reason for presuming "a conveyance or surrender by the trustee; that is, there

" must be some evidence of a conveyance, or some evidence " upon which the presumption of the conveyance may be " founded. The mere fact that the trustee was to convey " upon the execution of the trust, *or upon the happening of* " *a certain event*, is not enough. There must be some cir- " cumstances from which it may reasonably be concluded " that he did in *fact* convey."

Hence it follows as a corollary that when the *fact* appears that there was no conveyance there is no room for a presumption, and a court of *law* is bound by the fact as it exists. This position is well maintained by the authorities: Goodright *vs.* Symmer, 1 Kenyon, 385; Goodtitle *vs.* Duke of Chandos, 2 Burr, 1065; Jackson d. McCrae *vs.* Mancius, 2 Wend., 357; Schauber *vs.* Jackson, *Ib.*, 13; Keene *vs.* Deardon, 8 East., 248; Jackson d. Donally *vs.* Walsh, 2 Johns., 226; Jackson d. Meyers *vs.* Elsworth, 20 Johns., 180; Keen *vs.* Earl of Effingham, 2 Stra., 1267; Doe *vs.* Cook, 6 Bing., 174; Doolittle *vs.* Jones, 7 T. R., 43; Roe *vs.* Reed, 8 T. R., 122; Bristow *vs.* Pegge, 1 T. R., 758; Hodsden *vs.* Staple, 2 T. R., 684; Evans *vs.* Bickwell, 6 Ves., 184, 185; Doe *vs.* Scott, 11 East., 478; Doe *vs.* Williams, 2 H. & W., 749; Doe *vs.* Reed, 5 B. & Ald., 232; Warner *vs.* Henby, 48 Penn. St., 187; Dessaunier *vs.* Murphy, 22 Mo., 95; *Ib.*, 27 Mo., 48; Wendell *vs.* Moulton, 26 N. R., 46–65; Blake *vs.* Davis, 20 Ohio, 231; Roxbury *vs.* Huston, 37 Me., 42; Brock *vs.* Burchett, 2 Swan, Tenn., 27; Beach *vs.* Beach, 14 Vt., 28; Brown *vs.* Edson, 23 Vt., 435–449; Downing *vs.* Ford, 9 Dana, 391; Clements *vs.* Macheboeuf, 92 U. S., 425; Sulphen *vs.* Norris, 44 Texas, 204; Levett *vs.* Wilson, 3 Bing., 115; Dawson *vs.* Duke of Norfolk, 1 Price, 245; Hurst *vs.* McNeil, 1 Wash. C. C. R., 70; Rowell *vs.* Montville, (inhabitants of,) 4 Greenl., 270; Burke *vs.* Hammond, 76 Penn. St., 172; Nichols *vs.* Aylor, 7 Leigh, 546; Field *vs.* Brown, 24 Grat., 74; 2 Best

on Ev., (Morgan's Notes,) §§ 376, 377, 378, 380, 392, 393, 394, 395, and 396.

This rule, as we claim it, is established in California by statute. Section 1962 of the Code of Civil Procedure is as follows:

"The following presumptions, and *no others*, are deemed "conclusive: 1. A malicious and guilty intent from the "deliberate commission of an unlawful act for the purpose of "injuring another. 2. The truth of the facts recited from "the recital in a written instrument between the parties "thereto, or their successors in interest, by a subsequent "title; but this rule does not apply to the recital of a con- "sideration. 3. Whenever a party has by his own declara- "tion, act, or omission intentionally and deliberately led an- "other to believe a particular thing true, and to act upon "such belief, he cannot, in any litigation arising out of "such declaration, act, or omission be permitted to falsify "it. 4. A tenant is not permitted to deny the title of his "landlord at the time of the commencement of the relation. "5. The issue of a wife cohabiting with her husband who "is not impotent is indisputably presumed to be legitimate. "6. The judgment or order of a court when declared by this "code to be conclusive; but such judgment or order must be "alleged in the pleadings if there be an opportunity to do "so; if there be no such opportunity its judgment or order "may be used as evidence. 7. Any other presumption "which by statute is expressly made conclusive."

It will be observed that the presumption invoked by the defendant in error is not one of the conclusive presumptions contained in the statute. But the next section of the code (1963) does include it, and so much as we rely on is: "All "other presumptions are satisfactory if uncontradicted. "They are denominated disputable presumptions, and may "be controverted by other evidence. The following are of "that kind:" * * * (After enumerating thirty-six cases

in which disputable presumptions arise, which are not relevant in this case, the thirty-seventh subdivision is as follows :)

" 37. That a trustee or other person, whose duty it was to " convey real property to a particular person, has actually " conveyed to him when such presumption is necessary to " perfect the title of such person or his successor in in- " terest."

Therefore, both by the common law and by the statute of California the presumption of a conveyance by the trustee to his *cestui que trust* is a disputable presumption only.

(*d.*) But were it possible, in a case of this character, to override the legal effect of a *fact found* by a mere legal presumption to the contrary, yet no such presumption could properly be deduced from the record now before the Court. The three elements of such presumption, as given by the Court in 21 Wal., are now utterly wanting: (1) It was not the duty of the trustees to reconvey to French; (2) there is not sufficient reason for the presumption that they had so conveyed, and (3) the object of such presumption could not have been the support of a just title.

First, at the time French and his co-grantors (who were afterwards made defendants in this ejectment suit) conveyed to Martin and Lynch there was contention as to the title of the land. The "settlers," as they were called, who joined with French in the deed, were in possession. French was not at that time, and never since has he been in possession. The trust deed recognized some interest in the "settlers." It provided that they were to name one-half of the committee which was to fix the size and price of the lots to be afterwards sold by the trustees. (French, Vance, and Gibson, as Sutter claimants, could only name one committeeman out of four.) They were also to have three twenty-fourths of the proceeds of all sales of such lands of which they were

in possession. The trust deed makes no disclosure of where the real title to the land in controversy rested at the time it was executed. French, Rob't H. Vance, and Geo. L. Gibson, among the grantors, are described in the instrument as "Sutter claimants," and the other grantors as "settlers." They each and all purport to convey their "right, title, and "interest" to the trustees. The consideration from the trustees purports to be paid to *each* of the grantors.

Under these circumstances, can it be said that it was the duty of the trustees, on the failure of certain parties to organize and build the railroad mentioned in the deed, to convey the lands to French as sole grantee? Could Martin and Lynch thus decide the question of the contested title? If under any obligation to reconvey, should it not have been to *all* their grantors? Supposing the trustees had conveyed the land to French, and, in his subsequent contest with the "settlers," it had been conclusively decided that the just title was in the latter!

No trustee, unless he is so authorized by his deed of trust, has any right to distinguish between his trustors in a deed of reconveyance. In this case the trustees, Martin and Lynch, were not themselves to construct the railroad. They were not required by the terms of their trust to reconvey at the expiration of one year. It might well be that the *cestui que trust* had agreed on an extension of time, or that the corporation was formed and about to proceed to construct the road. The failure of French to notify them that the condition was broken, and to demand a conveyance, would certainly excuse them; and especially as less than three years had elapsed after the expiration of the year in which the road was to be constructed and the commencement of this action. They were not required by law nor their contract to act as volunteers and require their trustors to take back their title.

Second. The trust-deed provided that unless the railroad mentioned therein was built within one year from the date of the conveyance then the deed was to be void. But in case the iron for such road should be lost or detained in its transit from the Atlantic States by any accident, then the time for building said road should be extended to two years instead of one. The deed is dated on the 9th day of January, 1863. From the 9th day of January, 1864, (the termination of the first year,) to date of commencing this suit, (Nov. 8, 1866,) was just two years and ten months. From the 9th of January, 1865, when the two years' limitation expired to the date of commencing this action, was one year and ten months.

Now, under the rule laid down by this Court, in the 21 Wal., as cited above, "there must be sufficient reason for "the presumption" of reconveyance. In the opinion of the Court this "sufficient reason" was found in the supposed fact that *eight* years had elapsed after the time limited for building said railroad up to the time of commencing this action. This arose from an error in the record. At most, less than three years had expired. This does not bring the case within the rule above cited from Chitty: "When trustees "*ought* to convey to the beneficial owner it will, after the "lapse of *many years* and under certain circumstances, be "left to the jury to presume that they have conveyed "accordingly." Therefore the record does not present sufficient reason for the presumption that the trustees had reconveyed to French.

Third. The object of such a presumption could not, in this case, have been the support of a just title.

Although the Court below finds that the legal title and right to possession was in French at the time the trust-deed in question was executed, yet this is a conclusion not so readily deduced from the record before us. Certainly it

appears that his claim to title was disputed, (as we shall hereafter show more fully,) and his voluntary deed, in which it was provided that those claiming adversely should have a portion of the proceeds of the sale of the land, is a confession on his part that there were at least some equitable rights in the property that belonged to others.

We therefore conclude that the three elements necessary to a presumption of the re-conveyance of the title by the trustees to French do not appear in the case. It was not their duty to convey. There is no reason to believe they did convey. And such presumption cannot be made in this case in support of a just title.

There is, then, no proper reason why the trustees should have conveyed to French, and in addition the fact is now found that they did not convey. *The legal title was not in the defendant in error when he commenced this action.*

THE PLAINTIFF BELOW, DURING THE PENDENCY OF THE SUIT, CONVEYED SUCH INTEREST AS HE HAD TO VANCE, HIS TRUSTOR OR GRANTOR.

September 27, 1867, French conveyed the land in controversy to R. H. Vance, his trustor or mortgagor, (fol. 247,) and on the 17th day of February, 1871, said Vance conveyed to John Reynolds. (Fol. 323.) The defendants below plead these conveyances as a defence. (Fol. 51.)

(*a.*) A defendant may set forth in his answer as many defences as he may have. (Cal. Civil Code, sec. 441 and sec. 464.)

(*b.*) The action must be prosecuted by the real party in interest. (Cal. Practice Act, secs. 4 and 16; Cal. Civil Code, secs. 367 and 369.)

(*c.*) Section 16 of the Cal. Practice Act provided, and section 385 provides, that an action does not abate by the

transfer of interest of a party if the cause of action survive. (*Ex parte* Tinkham, 54 Cal., 201.)

Section 740 of the Code of Civil Procedure provides that "in an action for the recovery of real property, where the "plaintiff shows a right to recover at the time the action was "commenced, but it appears that the right has terminated "during the pendency of the action, the verdict and judg- "ment must be according to the fact, and the plaintiff may "recover damages for withholding the property."

This section was construed in Moore *vs.* Tice, (22 Cal., 513,) and it was held that where a plaintiff in ejectment had a right to recover at the commencement of the action, but that his right terminated during its pendency, he cannot recover the possession, but only his damages.

On the execution and delivery of the conveyance from French to Vance the cause of action, *quoad* the possession, ceased. The further prosecution of the action was in the name of another than the real party in interest, and the judgment in favor of French for possession was erroneous. (Green *vs.* Watkins, 6 Wheat., 260; Mackee *vs.* Thomas, 7 Wheat., 530; Lovell *vs.* Arnold, 2 Leigh, 16; Brinkle *vs.* Luce, 1 Comstock, 163; Harris *vs.* Bockford, 9 Humph., 673.)

Judge Tucker, in his commentaries on the laws of Virginia, (book 3, p. 223,) gives the true rule, and it seems to be this:

If a cause of action be *ex contractu* it survives, but if be *ex delicto* it abates. (See Putnam *vs.* Van Buren, 7 How. Pr., 369; Kissin *vs.* Hamilton, 20 How. Pr., 369.)

(*d.*) The language is, that every action must be "prose- "cuted" in the name of the real party in interest, and there is no provision authorizing an action commenced by the real party in interest to be *prosecuted* by him after his interest ceases. French's right of possession (in the language of the code) "terminated" by the force and effect of his deed.

He was in no sense a trustee of his grantee, and by the very language of the statute he can only have judgment according to the fact—that is, for his damages and costs. (Murray *vs.* Garretson, 4 Sergeant and R., 129; Alden *vs.* Grove, 18 Pa. St., 385.)

(*e.*) A plaintiff in ejectment must recover, if at all, in the strength of his own title as it was at the time he commenced his action, and also as it was at the time of the trial. (Moore *vs.* Tice, 22 Cal., 516; Love *vs.* Simms, 9 Wheat., 524; Alden *vs.* Grove, 18 Penn. St., 385; Lessee of Smith *vs.* McCann, 24 How., 403; Marshal *vs.* Shafter, 32 Cal., 184; 11 Gill and Johnson, 358; 4 Md. R., 140–173.)

(*f.*) *Quoad* the damages accruing before the plaintiff conveyed, his cause of action continued; but as to the possession of the land and the *mesne* profits accruing after his conveyance, the cause of the action did not survive to (*i. e.*, remain in) him.

Runnington on Ej., (ed. 1795,) 404; Doe *vs.* Black, 3 Campbell, 447; Thurston *vs.* Gray, 2 Stra., 1043; Blackman *vs.* Gregg, 10 Watts, 224; Tryon *vs.* Tryon, 16 Vt., 313; Burton *vs.* Austin, 4 Vt., 105; Cheny *vs.* Cheny, 26 Vt., 618, and Cresap *vs.* Hulson, 9 Gill, 269.

In places where an adverse possession prevents the legal title from passing by conveyance the rule is otherwise, as the title still remains in the holder notwithstanding conveyance.

Livingston & Prosens, 2 Hill, 558; Gould *vs.* Newman, 6 Mass., 240; Long *vs.* Wilbraham, 2 Duer, 175, and Freer *vs.* Jackson, 8 Johns., 506.

Tyler in his work on ejectment and adverse possession (p. 577) recognizes the rule as we claim it, citing Murray *vs.* Garrett, 4 Sergt. & R., 130.

THE JUDGMENT IN FAVOR OF THE PLAINTIFFS IN ERROR AND AGAINST VANCE, WHO BROUGHT EJECTMENT, WAS A BAR TO THIS ACTION.

On the 27th day of September, 1867, while this suit was pending, French reconveyed to Vance all the interest he ever had in the premises in question, (fol. 247,) and on the 4th of November, 1867, Vance commenced his action in ejectment against the same defendants French had sued.

The title was put in issue by the pleadings in that action, and such proceedings were regularly had therein that the plaintiffs in error in this action had judgment against Vance for their costs. He appealed to the Supreme Court of the State of California, where the judgment was affirmed, as reported in 38 Cal., 586. (See, also, as part of the findings in this case, fol. 323.)

In the opinion of said Supreme Court it appears that prior to the first of March, 1862, Vance claimed and held the same title to the land in controversy upon which he relied for a recovery. On that day he conveyed to French by a deed absolute on its face; on the same day, as a part of the same transaction, French executed an instrument in writing to Vance, in which he stated that the land was deeded to him as security for the payment of a promissory note for $18, 241.82. The instrument executed by French authorized him, or he reserved the right, to sell the land and apply the proceeds on the note.

The Court decided that the two instruments *vested the legal title in French in trust for Vance.* The fact also appears that after the *first* judgment of the Circuit Court was rendered in this action against French, that he reconveyed to Vance, (as above stated,) who thereupon commenced his said action upon the same title held by French when he commenced this action. Vance was the attorney in fact of French and employed counsel to bring this suit and advance the costs.

Now in the action commenced and prosecuted to final termination by Vance, against these plaintiffs in error, they pleaded the former judgment of the Circuit Court in this action as a bar, and it was decided to be a bar to the action. The grounds of the decision are fully stated in the report of the case, (38 Cal., 586.) After the judgment in that case was affirmed Vance, on the 17th of February, 1871, conveyed to John Reynolds, the attorney for French in this action, and the attorney for Vance in that action. He had notice of the judgment. (Fols. 247 to 324.) The plaintiffs in error pleaded that judgment *puis darien continuance*, as a bar to the further prosecution of this action. (See answer of Lincoln, fols. 52 to 56.) The separate answers of the other plaintiffs in error are the same.

The defendant in error, therefore, had no title, either legal or equitable, when this case was last tried, but the action is prosecuted in his name for the benefit of John Reynolds, who claims through Vance.

The question now arises, can John Reynolds, after the defeat of his grantor, Vance, in an action involving the title to the land, recover in this action involving the same title? To answer in the affirmative is to violate the well-settled rule *nemo vis vexari pro eadem causa.*

(*a.*) What parties are bound by judgments? If parties are identified in interest, or privies in estate, or title represented, it is sufficient. Tinkham *vs.* Borst, 24 How. Pr., 246; Cunningham *vs.* Ashley, 45 Cal., 485–495; Johnson *vs.* Wild, 8 Salem, 129; Thurston *vs.* Spratt, 52 Me., 202; Calhoun *vs.* Dunning, 4 Dall., 120; Rogers *vs.* Haines, 3 Greenl. R., 334; Burhaus *vs.* Van Zant, 3 Selden, 524, and Wells on Res Adjudicata and Stare Dicisis, p. 24, § 27.

(*b.*) The law of California, at the time the judgment was entered in favor of plaintiffs in error in the action of Vance *vs.* Lincoln *et al.*, provided, (Practice Act, sec. 148:)

"An action may be dismissed or a judgment of nonsuit "be entered in the following cases:

"1st. By the plaintiff himself, at any time before trial, "upon the payment of costs, if a counter-claim has not "been made.

"If a provisional remedy has been allowed, the undertak- "ing shall thereupon be delivered by the clerk to the de- "fendant, who may have his action thereon.

"2d. By either party upon the written consent of the "other.

"3d. By the Court when the plaintiff fails to appear on "the trial and the defendant appears and asks for a dis- "missal.

"4th. By the Court when, upon the trial and before the "final submission of the case, the plaintiff abandons it.

"5th. By the Court, upon the motion of the defendant, "when, upon the trial, the plaintiff fails to prove a suffi- "cient case for the jury.

"The dismissal mentioned in the first two subdivisions "shall be made by an entry in the clerk's register. Judg- "ment may thereupon be entered accordingly."

"SECTION 149. In every case, other than those mentioned "in the last section, the judgment shall be rendered on the "*merits.*"

These sections are continued in the Code of Civil Procedure of California, as sections 581 and 582.

If an action is not dismissed, as provided in some one of the subdivisions of section 148, the judgment must be considered as rendered upon the merits, and it concludes the parties. Such is the construction of those sections. (Merritt *vs.* Campbell, 47 Cal., 542; Hancock *vs.* Lopey, 53 Cal., 362.)

A similar statute in the State of Nevada received a similar judicial construction in a case involving a question of the effect of a judgment of dismissal upon the title to real estate; and the decision is an authority in favor of the plaintiffs in error. (Phillpotts *vs.* Blasdell, 10 Nev., 19–23; Carr *vs.* Woodruff, 6 Jones, (N. C.,) 400.)

(*c.*) When two actions are pending at the same time in two different Courts, involving the same title or cause of action, a judgment in one is a bar to the further prosecution of the other. The rule is the same when one is a State and other a Federal Court, and it makes no difference which action was commenced first.

Earl *vs.* Raymond, 4 McLane, 234; Walsh *vs.* Duskin, 12 John., 108; Marsh *vs.* Pice, 4 Rawle, 273; Emery *vs.* Fowler, 39 Me., 327; Hammond *vs.* Baker, 3 Sandf., 704; Kider *vs.* Lafferty, 1 Whart., 312; Reed *vs.* Kavin's Ex'r, 7 Serg. & Rawle, 353; Reese *vs.* Emerich, 6 Serg. & Rawle, 288; Garvin *vs.* Dawson, 13 Serg. & Rawle, 246; Laqier *vs.* Westcott, 26 N. Y., 146; Christmas *vs.* Russell, 5 Wal., 290, McGilvary *vs.* Avery, 30 Vt., 538, and Mills *vs.* Duryee, 7 Cranch, 483.

(*d.*) Vance, in his action in the State Court against these plaintiffs in error, relied on title in fee for a recovery. The issue in that action was title or no title. It was determined against him. The judgment created an estoppel and extinguished his title. He had none to convey to Reynolds.

In Wells on *Res Adjudicata and Stare Decisis*, (p. 25, sec. 28,) the rule is given thus: "And so as to privies in "estate, it is held that a judgment which affects directly an "estate or interest in land and binds the rights of the parties "is at least as effectual as a release or confirmation by one "party to the other, and makes part of the title to the land "and extends to all who claim under the parties to it."

This rule is supported by the following cases: Mahoney *vs.* Middleton, 41 Cal., 41–53; Adams *vs.* Barnes, 17 Mass., 367; Kelley *vs.* Doulin, 70 Ill., 378–386; Doyle *vs.* Franklin, 40 Cal., 339; Satterlee *vs.* Bliss, 36 Cal., 514; Marshall *vs.* Shafter, 32 Cal., 194; Phillpotts *vs.* Blasdell, 10 Nev., 19–23; Cunningham *vs.* Ashley, 45 Cal., 493, and Hancock *vs.* Lopey, 53 Cal., 362.

(*e.*) The judgment in the action of Vance *vs.* Lincoln *et al.* in the State Court, which was pleaded by the plaintiffs in error, has never been reversed or set aside, and it remains in full force. But it is true that after that judgment was rendered a writ of error was sued out in this Court, and the case of French *vs.* Edwards *et al.* was reversed. (13 Wal., 506.)

As the *evidence* and cause of action *merged* in the judgment the reversal of the judgment of the Circuit Court did not reverse the judgment of the State Court or limit its effect as evidence or as an estoppel. To hold otherwise is to hold that it is the *evidence* on which the judgment was rendered, and not the judgment itself, that constitutes the estoppel; and, if that is so, to destroy the *evidence* on which the judgment was founded is to destroy the estoppel. Such is not the law. The evidence is merged in the judgment. Earl *vs.* Raymond, 4 McLane, 234; McGilveray *vs.* Avery, 30 Vt., 538; Homer *vs.* Fish, 1 Pick., 339; Kelley *vs.* Mige, 3 Sneed, 61; Christmas *vs.* Russell, 5 Wal., 290; Byers *vs.* Nail, 43 Cal., 216; Doyle *vs.* Franklin, 40 Cal., 106; Mills *vs.* Duryee, 7 Cranch, 481; Smith *vs.* Lewis, 3 Johns., 157; Smith *vs.* Lowrey, 1 Johns Ch., 322; Jones *v.* Jamison, 15 La. An., 35, and Cowen and Hills' notes to Phil. on Ev., 20.

(*f.*) Vance, being beneficially interested in this action when it was commenced, and having received a reconveyance from French while the action was pending, (Sept. 27, 1867,) had an election to pursue one of two remedies. (1,) To sue out a writ of error in this action to reverse the *first* judgment of the Circuit Court; or, (2,) to bring a new action in the State court. He chose the latter remedy instead of the former, and although that judgment of the State Court proved fatal to his recovery, yet he is bound by his election. The judgment in the State Court must be held to close the controversy. Garvin *vs.* Dawson, 13 Serg. & Rawle, 247; Reese

vs. Emerick, 6 *Ib.*, 288; Gilchrist *vs.* Bale, 8 Watts, 359; Morris *vs.* Rexford, 18 N. Y., 552; Sawyer *vs.* Wood, 3 Johns. Ch., 416; Raison *vs.* Turner, 4 John., 472; McGilvray *vs.* Avery, 30 Vt., 538; Hammond *vs.* Baker, 3 Sandf., 704; Emery *vs.* Fowler, 39 Me., 327; Caw *vs.* Woodliff, 6 Jones, (N. C.,) 400, and Bigelow on Estoppel, pp. 251 and 252.

(*g.*) As it is the interest of the public *interest reipublicaé ut sit finis litium*, the plea of a former judgment is as meritorious as any other defence. (Marsh *vs.* Pier, 4 Rawle, 273; Caw *vs.* Woodliff, 6 Jones, (N. C.,) 400.)

(*h.*) A judgment for a defendant is always an estoppel. (Bigelow on Estoppel, p. 251, and cases there cited.)

THE MILIKEN TITLE.

The defendant in error claims his title through L. W. Hastings by reason of the following conveyances: L. W. Hastings and wife to Lyman H. Hastings, August 25, 1857; Lyman H. Hastings to Ed. Martin, December 4, 1857; Ed. Martin to R. H. Vance, July 6, 1859, and R. H. Vance to said Ira French, March 1, 1862. (Fols. 215 to 218.)

But April 8, 1854, the interest of said L. W. Hastings passed to John B. Miliken by sheriff's deed of that date. (Fols. 173 to 178.) The judgment under which the sale was made was entered in the proper Court July 6, 1850, by confession, (fols. 159 to 161,) pursuant to sec. 293 of the act to regulate proceedings in civil cases. (Acts of 1850, p. 454.)

That section reads: "A judgment by confession may be "entered without action either for money due or to become "due in the following manner:

"1st. A statement in writing must be made by the de- "fendant for the amount of which judgment may be entered, "and authorize the entry of judgment thereon.

"2d. If it be for money due, or to become due, it must

" state concisely the facts out of which it arose, and must " show that the sum confessed therein is justly due or to be- " come due.

" 3d. If it be for the purpose of securing the plaintiff " against liability it must state concisely the facts constitu- " ting the liability, and must show sum confessed therefor " does not exceed the same."

The judgment confessed fully satisfied these provisions and became and was a valid judgment. (Form of Confession, fols. 159–160.)

(*a.*) The only objection to the judgment suggested in the opinion of the Court below (fols. 125–126) is that it was not signed by all the defendants in person, and Chapin *vs.* Thompson (20 Cal., 681) is relied on as settling the law of this case on that point. But it will be seen that in Chapin *vs.* Thompson the statement was not signed by the defendant or by his attorney. In this case two defendants signed in person and the third, Henry Cheever, by his attorneys, Kewen & Morrison. We submit that an attorney has power to appear in Court and bind his client by signing his name to any plea or proceeding therein. And in this case Cheever subsequently by his acts adopted and confirmed the act of his attorneys.

(*b.*) Said Henry Cheever, one of the defendants therein, (a surety for Hastings & Wimmer, the other defendants,) gave to the plaintiffs certain notes of one Barton Lee, which Cheever secured by mortgage, and Henley & Hastings thereupon, on the first day of October, 1850, endorsed the execution which had been issued therein, as follows: " Received " by notes on Barton Lee, secured by mortgage of Henry " Cheever, one of the defendants, satisfaction of the within execution (except costs not paid.") March 20, 1851, said Henly & Hastings filed in the case an assignment of said judgment to said Cheever. (Fols. 166–167.)

On the 25th of June, 1853, a second execution was issued on said judgment, (fol. 168,) by virtue of which a levy was made on the lands in controversy as the property of said defendant, L. W. Hastings, and they were regularly sold by the sheriff to John B. Miliken as the highest bidder, &c., on the 12th day of August, 1853, (fols. 170 to 172,) and on the 8th day of April, 1854, said sheriff executed and delivered to said Miliken his deed for the same. (Fols. 173 *et seq.*)

(*c.*) The judgment was not satisfied by giving notes and mortgage. They were merely further security and not a payment.

(*d.*) The costs remaining unpaid were sufficient to support a sale under the judgment.

(*e.*) The notes and mortgage given by Cheever to plaintiffs operated in law to subrogate him to all the rights the plaintiffs had in the judgment, and did not operate as a satisfaction of the same as to the principal, L. W. Hastings, and as against him the judgment was still valid. Sanford *vs.* McLane, 3 Paige, 117; Cottrell's Appeal, 23 Pa. St., 294; Mathews *vs.* Aiken, 1 Comstock, 599; Lewis *vs.* Palmer and King, 28 N. Y., 271; 1 Leading Cases in Eq., 151, and cases there cited.

DEPENDANT IN ERROR CLAIMS TITLE THROUGH G. L. GIBSON. GIBSON HAD NO TITLE, AND CONVEYED NONE.

The interest in the land in controversy, claimed by the defendant in error, passed to and became vested in Abram T. Melvin, R. G. Sneath, and R. H. Vance, April 22, 1853, in trust for the Sutter Land Company. (Fols. 184–185.

What the Sutter Land Company was, and the names of those composing it, with their respective shares, is shown by the articles of association. (Fols. 199 *et seq.*)

One N. S. Petit, one of the owners of shares, in said company, Sept. 8, 1858, sued two of the trustees, with cer-

tain other persons, at law, for a debt of $250. The defendants answered, setting up certain matters which were not noticed by the court, (fol. 192 to 211,) and a common-law judgment was entered for $290.72 against said Sneath and Vance and others, the trustee Melvin not being a party.

Thereupon the said Petit sued out his execution and levied it upon some of the lands in controversy, (see fols. 213 *et seq.*, with map facing page 40 of the record,) and sold the same to G. L. Gibson for $400. (Fol. 215.)

The defendant in error claims his title through such sale. If this sale did not pass title then the defendant in error does not connect himself with it and must fail.

The land was held in trust for the Sutter Land Company and was sold by the sheriff to satisfy a personal judgment against two of the trustees. Such a sale is void. Elliott *vs.* Armstrong, 2 Blackford, 198; Baker *vs.* Copenbarger *et al.*. 15 Ill., 103; Mallory *vs.* Clark, 9 Abb. Pr., 358; *Ib.*, 20 How. Pr., 418; 1 Ohio, 267; Hunt *et al. vs.* Townshend, 31 Md., 336; Houston *vs.* Knowland *et al.*, 7 Gill and J., 480, and Smith *vs.* McCann, 24 How., U. S., 398.

THE COURT FOUND THAT L. M. LINCOLN, ONE OF THE DEFENDANTS BELOW, WAS NOT IN POSSESSION OF ANY PART OF THE PREMISES AT TIME OF COMMENCING SUIT, HENCE JUDGMENT AS TO HIM WAS ERRONEOUS.

The Court in his findings of fact (fols. 334–335) states positively that the tract of sixty acres, known as "tule land" was vacant and unoccupied at the time of commencing this action, except that some cattle belonging to Edwards and Hoyt were pasturing on a portion of the same, but it did not appear that either said Edwards or Hoyt were exercising any acts of dominion over said tract, &c.

In his conclusions of law the court finds (fol. 341) "2, "that the plaintiff is entitled to judgment against the de-

" fendant L. M. Lincoln for three hundred and thirty dollars, " that being the value of the rents and profits of the part of " said premises found to be in his possession, as stated in " the foregoing findings of fact *designated in said findings* " *as tule land, and containing* " *sixty acres.*"

And (fols. 348, 349) judgment was accordingly entered against said Lincoln, as damages for withholding possession of said premises, in the sum of $300, and judgment for costs, against Lincoln and the other plaintiffs in error, in the sum of $959.25. This is evidently erroneous.

THE AMENDED TAX DEED TO L. M. LINCOLN WAS VALID AND SUFFICIENT.

The tax deed under which Lincoln entered was on a former appeal held to be invalid. (13 Wall., 506.)

The suit resulting in the tax sale was against the land, (G. & R. H. Vance,) to subject the land itself to sale for the payment of the tax, and the proceedings fully complied with the statutes. (Fol. 218 *et seq.*) The sheriff's deed held to be invalid is set out at fols. 234 *et seq.*

Pending this action below, the sheriff selling the land at tax sales, had leave to make an amended return and a deed in accordance with the facts, (the first deed containing misrecitals, fols. 238 to 245,) and this latter deed passed the legal title to the said land to L. M. Lincoln.

(*a.*) The first sheriff's deed containing misrecitals, and being therefore void, the sheriff had power, on leave, to amend his return according to the fact and make and deliver a new deed to the purchaser, which, if it show that the proceedings were according to statute, would convey the title.

Freeman on Executions, §§ 359 and 360; Garrett *vs.* Doub, 23 Cal., 78; Jarboe *vs.* Hall, 37 Md., 345; Williams *vs.* Huston, 71 N. C., 163; Thatcher *vs.* Miller, 11 Mass., 413; Rucker *vs.* Harrison, 6 Munf., 181; Gilman *vs.* Stetson, 16

Me., 124; Scott *vs.* Trustees, 5 N. C. Pr. R., 228; Muldrow *vs.* Bates, 5 Mo., 214; Irvine *vs.* Scobee, 5 Litt., 70; Fowler *vs.* Robary, 4 Ohio, 60; Corby *vs.* Burns, 36 Mo., 194; Hall *vs.* Ayer, 19 How. Pr., 90; Baker *vs.* Benninger, 14 N. Y., 277; White R. Bank *vs.* Downer, 16 Vt., 338; Hadgen *vs.* Laird, 10 Ala., 678; Trotter *vs.* Parker, 38 Miss., 473; People *vs.* Ames, 35 N. Y., 489; Thones *vs.* Bowden, 3 Texas, 783; Stone *vs.* Wilson, 10 Gratt., 533, and Gwynn on Sheriffs, 471.

The new deed may be made at any time.

Doe *ex dem* Miller *vs.* Tiffany, 5 N. C. 2 B. R., 89; same case, 10 *Ib.*, 77; Thornton *vs.* Miskemmen, 48 Mo., 221; McHeady *vs.* Sexton, 29 Iowa, 355; Maxcy *vs.* Clabaugh, 1 Gilman (Ill.) 26; Bank of Utica *vs.* M. & N., 3 Barb. Ch., 528; State *vs.* Winn, 19 Wis., 304; Woodman *vs.* Clapp, 21 Wis., 350.

(*c.*) The officers return forms no part of the muniments of title of a holder of a sheriff's deed.

The decree was regularly entered. (Fols. 225 *et seq.*) The judgment and a copy constituting an order of Court to sell the specified land on which the lien exists fully authorized the sheriff to sell, and his recitals in his deed show how he performed his official acts.

These show a strict compliance with the statute authorizing such sales.

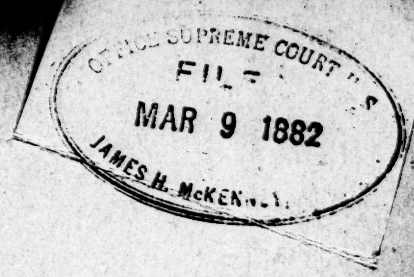
Blood *vs.* Light, 38 Cal. 658; Ingersoll *vs.* ——, 40 Cal. 611; Donahue *vs.* McNulty, 24 Cal., 417; Hehn *vs.* ——, 30 Cal., 287; Dodge *vs.* Walley, 22 Cal., 224; Lessee of Cooper *vs.* Galbraith, 3 Wash. C. C., 550; Den *vs.* Winans, 2 Green N. J., 6; Ritter *vs.* Scannell, 11 Cal., 238; Jackson *vs.* Stunberg, 20 John., 50; Zabriskie *vs.* Mead, 2 Nev., 285, 1 Greenleaf Ev., sec. 23.

(*d.*) L. M. Lincoln went into possession under his writ of assistance on the 4th day of January next, after the com-

mencement of this action, (fols. 336–337,) and the judgment as to him is erroneous.

French received judgment for damages up to the time of the last trial, and, as he had conveyed his interest long prior to that time, his judgment was not according to the fact. (See authorities cited above.)

J. H. McKUNE,
A. T. BRITTON,
J. H. McGOWAN,
Att'ys for Plaintiffs in Error.



BRIEF FOR DEFENDANT IN ERROR.

SUPREME COURT OF THE UNITED STATES.

No. 265.

L M. LINCOLN ET AL.,
PLAINTIFFS IN ERROR.

VS.

IRA G. FRENCH,
DEFENDANT IN ERROR.

JOHN REYNOLDS,
S. O. HOUGHTON,
OF COUNSEL FOR DEFT. IN ERROR.

San Jose Mercury Steam Print.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 265.

L. M. LINCOLN ET AL.,

PLAINTIFFS IN ERROR.

vs.

IRA G. FRENCH,

DEFENDANT IN ERROR.

BRIEF ON THE PART OF DEFENDANT IN ERROR.

In the Circuit Court, the Plaintiff in Error, defendant in that Court, relied upon five points to defeat the plaintiff's action, neither of which was claimed to establish any right in the defendants, but each, as at the other trials, were invoked to defeat the plaintiff upon purely technical grounds—unless the supposed tax title be ranked as a meritorious defense. Each of these points is clearly stated and answered by the learned Circuit Judge in his opinion, at pages 34 to 40 of the record, and in 4 Sawyer's Reports, at pages 128 to 132: and we might with confidence rest the case, by simply referring to these two opinions, if it were not necessary, for the convenience of this Court, to make references to the long and confused record filed in this case.

I.

Before proceeding to discuss the points sought to be presented upon this record, we deem it proper to call attention to the record itself. There is no bill of exceptions, but the case comes here upon the judgment roll alone.

When this case was here before, on the second writ of error, it was decided upon certain special facts found by the Circuit Court, and this Court determined that the plaintiff (the present defendant in error) had title, and remanded the cause to the Circuit Court for further proceedings, in accordance with the opinion of this Court, the effect of which was to remand the cause for the Circuit Court to try and find any *other* facts material to the determination of the case according to justice and right, the facts already found remaining unaffected by the reversal of the judgment.

See mandate "Additional record," page 35, and findings at pages 26 to 30, (Additional record); French vs. Edwards, 21 Wal. 151, Ex parte French, 91 U. S. Rep. 426.

These special facts found that on March 1st, 1862, Robert H. Vance was owner in fee of the demanded premises, and that on that day he conveyed to the plaintiff French; and that French remained seized of the premises until January 9th, 1863, when he joined with four of the defendants in this case, and six others, in a trust deed to Martin and Lynch.

The findings made at the last trial, on the further proceedings ordered by this Court, find that Sutter, who was the owner of the premises in 1849, conveyed them to one L W. Hastings, and that Hastings made conveyances of certain small lots, and upon these conveyances the Circuit Court excepted from the judgment the lots found to be outstanding. These deeds were all made early in 1853.

See record, pages 41, 42 and 43.

The Court then finds an alleged judgment by confession, under which, it was claimed, Vance's grantor had been divested of his title to portions of the premises in 1854 This is what the Circuit Judge, in his opinion, terms the Milliken title. See record, pages 43 to 50.

The Court next finds that in 1853 Hastings conveyed an undivided half of all the premises to Vance and two others; and that later in the same year he made another deed to them of an interest in certain specific lots; and that afterwards these three grantees of Hastings, or some of them, executed conveyances of certain lots which, so far as they are found to be outstanding, are excepted from the judgment.

There is then found what purports to be a deed from Vance and his two co-grantees, to himself and two others, who are therein designated as "trustees of the Sutter Land Company." This deed does not describe any land, nor is it found to embrace any of the premises in controversy.

It is then found that between May and September, 1853, Melvin and Vance, two of these alleged trustees, executed conveyances to some small lots which are parts of the premises in controversy; none of which are found to be outstanding, except those which are excepted from the judgment; and only one of which can be inferred to be outstanding from anything in the record

The Court then finds the record of a judgment recovered by one Pettit against the supposed members of this Sutter Land Company, which was introduced by the defendants to show the existence of such an entity as the "Sutter Land Company."

It is not found that any such company did, in fact, exist, except as it is so stated in the opinion of the Circuit Judge, at page 35 of the record.

It is found that a sale was made, under this judgment, of certain lots, which were afterwards conveyed to plaintiff French. See record, pages 54 to 63.

The Court then finds that all the interest in the demanded premises, remaining in L. W. Hastings, was conveyed to Vance, and that, on March 1st, 1862, Vance conveyed to French.

The Court then finds the proceedings in a suit for taxes, and the sale and deed thereunder, which are the same as were before this Court on the first writ of error in this case. See record, pages 75 to 92; Bill of Exceptions "Additional record." pages 11 to 23; Mandate, page 34, and French vs. Edwards, 13 Wal. 506.

It is then found that six years after the making of the deed that was before this Court, and after the Sheriff who made the sale had gone out of office, upon an *ex parte* application, the Court in which the tax suit had been tried, ordered him to make an amended return, the order directing what it should contain; and that on the same day a new return was made in conformity to this order, and a new deed was also made on the same day. It does not appear what showing was made to obtain the order. See record, pages 69, 70 and 71.

The record shows that a deputy made the sale, not the Sheriff himself. See record, page 67.

Then at page 72 it is found that on the same day that the deed from Vance to French was made, French gave Vance an agreement that the premises conveyed to him should be held in trust to pay a note held by French against Vance. It is then found that in September, 1867, French conveyed the premises back to Vance; and that Vance brought suit in November, 1867, in the State Court, to recover the premises; and that the

judgment of the Circuit Court in this case, entered in April, 1867, was pleaded in bar of that action, and prevailed as an estoppel. See record, pages 72 to 95; Vance vs. Lincoln, 38 Cal. 586.

The writ of error upon which the judgment pleaded in bar was reversed by this Court, was sued out in April, 1870. See record in case No. 474, Calendar of 1871, page 1.

The Court next finds the trust deed and the facts connected with it, as found in the special findings brought here by the second writ of error in this case, and here passed on. See record, pages 95 to 98, Finding XXXIII. See also "Additional record," pages 26 to 30, and 21 Wallace, 147.

The additional fact is then found, at page 98, that a reconveyance was not actually delivered to French.

The Court then finds the separate possession of the various defendants, and the value of the rents and profits of their respective parcels.

It is then found that the plaintiff is entitled to the demanded premises, except certain lots, the title to which is found to be outstanding.

Some question being made as to the possession of the defendant Lincoln, the Court finds the circumstances of his possession. See record, page 98.

II.

The *first* point relied on by the defendants below, in its order as considered by the learned Circuit Judge, is based upon the judgment by confession against L. W. Hastings and others, and a sale of the demanded premises thereunder to one Milliken—found in the record, pages 43 to 50.

1st. This judgment is void.

The statute of California in relation to the entry of judgment by confession then provided as follows:

"A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability, on behalf of the defendant, or both, in the following manner:

1st. A statement in writing must be made by the defendant for the amount of which judgment may be entered, and authorize the entry of judgment thereon.

2d. If it be for money due or to become due, it must state concisely the facts out of which it arose, and must show that the sum confessed therefor is justly due or to become due.

3d. If it be for the purpose of securing the plaintiff against liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the same." Stats. of 1850, p. 454, § 293.

The Statement was not signed by Cheever, one of the parties. It recites that it is to be signed by Cheever, by E. J. C. Kewen, his duly authorized attorney, but the record does not otherwise show that Kewen was his attorney, nor is it so recited in the judgment. But the Statement is not signed by E. J C. Kewen or any one else purporting to have any power of attorney, but by Kewen & Morrison, presumably attorneys at law, for while some proof is made of the signatures of the other two parties, none is attempted as to Cheever's.

It is not necessary to consider any other defects in this judgment, as this is fatal to its validity.

Chipman vs. Thompson, 20 California Reports, 687.

2d. On August 26th, 1850, an execution was issued on this void judgment, and on October 12th, 1850, it was returned with an endorsement thereon, signed by the judgment creditors, acknowledging full satisfaction of the judgment. After this, in March, 1851, the judgment creditors endorsed on this satisfied judgment an assignment to one of the judgment debtors, reciting as a consideration for the assignment, the previous satisfaction.

After all this, in 1853, another execution was issued, under which it is claimed these premises were sold. We do not deem it necessary, or respectful to the Court, to discuss the proposition that no valid sale could be made to satisfy a judgment already satisfied, even if it had been valid. The previous execution, as well as the judgment itself, showed the satisfaction, and it is presumed the Clerk made all the entries required by law. The Circuit Court rejected this defense upon both these grounds. See record, page 34.

III.

The second defense relied on by defendants, and considered by the Circuit Judge (Record, page 34), seems to be two-fold:

1st. That a judgment of the State Court, rendered in April, 1868, which was given in favor of the defendants, on the plea that the first judgment of the Circuit Court in this action was a bar, itself estops the plaintiff from proceeding in this case upon the mandate of this Court, after the reversal of the judgment which abated the action.

2d. That this action abated by the conveyance from French to Vance, *pendente lite*.

First: As to the judgment of the State Court:

The first judgment in this case was entered in the Circuit Court in April, 1867 (record, page 91). At the beginning of this controversy the defendants claimed that the agreement found at page 72 of the record, operated, under the laws of California, to turn the deed from Vance to French into a mortgage, and that it did not therefore pass the legal title. This question they presented to the Circuit Court upon a plea in abatement, and the learned Judge then holding that Court tried the question and decided it adversely to the defendants. See "Additional record," page 5.

Considering the high character for learning of the counsel for the defendants at that time, and the doubt, that the zeal and manifest sincerity with which he pressed his objection, cast upon the legal title of the plaintiff, added to the fact that it seemed doubtful if it could be tried upon a plea in abatement so as to be conclusive. French, in September, 1867, made a quit claim deed to Vance, and he in the same year commenced this suit in the State Court, to test the question so zealously pressed by defendant's counsel.

The defendants there, who are plaintiffs in error here, pleaded the judgment of the Circuit Court of April, 1867, as an estoppel. That plea, by consent, was first tried, separately from the other defenses, and was sustained, and judgment rendered upon it, without trying any other issue. See record, pages 75 and 92. From this judgment an appeal was taken to the Supreme Court of the State, the only question presented being whether the declaration of trust, accompanying the deed of March 1st, 1862, made it a mortgage. That Court held that it did not, but that the legal title passed by it, and therefore the judgment of the Circuit Court was a bar while it remained in force.

Vance vs. Lincoln, 38 Cal. 586.

In April, 1870, a writ of error was issued from this Court, upon which, in 1872, the judgment was reversed and a new trial awarded.

In 1872 the cause was retried in the Circuit Court, (see add. record, page 2,) and afterwards, in 1874, the judgment then rendered was reversed, and the cause remanded to the Circuit Court for further proceedings, in accordance with the opinion of this Court. And it is to bar these further proceedings that this plea is interposed.

We respectfully submit that the opinions of the learned Circuit Judge, at page 34 of the record, and in 4 Sawyer's C. C. Reps., afford a complete answer to this defense.

(*a*) When this Court ordered a new trial of the action, and it was tried and no objection made on this ground, and it came again to this Court, and the Circuit Court was again directed to proceed, the defendant could not defeat the mandate of this Court by pleading matters which existed before the former trial, in abatement of the action, or to bar the further proceedings.

(*b*) Section 385 of the California Code of Procedure is as follows:

"An action or proceeding does not abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, marriage or other disability of a party, the Court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of interest the action or proceeding may be continued in the name of the original party, or the Court may allow the person to whom the transfer is made to be substituted in the action or proceeding."

Section 740 of the same Code reads as follows: "In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated, during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property."

These two sections are substantially the same as sections 16 and 256 of the former Practice Act, which were construed by the Supreme Court of the State in *Moss vs. Shear*, 30 *Cal.* 475. The opinion in this case fully sustains the opinion of the Circuit Judge. (French vs. Edwards, 4 Sawyer's C. C. Rep. 125.)

IV.

The next question discussed and relied on by the defendants in the Circuit Court, arises on the trust deed considered by this Court on the second writ of error in this case. See finding XXXIII record, pages 95 to 98; Additional record, pages 26—30.

The opinion of this Court on the former writ of error, in 21

Wal. 147, is conclusive upon this point, for the reasons stated by the Circuit Judge at page 35 of the record.

In addition to these reasons we submit that there are several conclusive answers to this defense.

1st. This Court says at page 150 (21 Wal.): "It is not necessary that the presumption (of a reconveyance) should rest upon a basis of proof or conviction that the conveyance had in fact been executed. It is made because right and justice require it."

Assuming, then, for the sake of the argument, that this presumption could be rebutted, and that it was an open question at the last trial, the only way to avoid it would be to show that a reconveyance ought not to have been made, for if it is not necessary that the presumption should rest upon a basis of proof or conviction that the reconveyance had in fact been made, but because right and justice require it, then the trial Court may find or instruct the jury to find the reinvestiture of the title against the fact of a reconveyance, "if right and justice require it." The facts on which the presumption is based can alone be controverted. The opinion of this Court is not merely authority but the law of this case.

The Legislature of California, in 1872, declared the same rule as we understand the opinion of this Court to have announced. Section 871 of the Civil Code reads as follows:

"When the purpose for which an express trust was created ceases, the estate of the trustee also ceases."

2d. The Circuit Court does not find that a conveyance was not in fact made. The finding, as we understand it, is that no conveyance was in fact executed and delivered to French. See record, page 95.

It is possible that a reconveyance may have been executed and delivered to some one of the eleven grantors in the deed of trust. It was not the duty of the trustees to adjust the interests of the various grantors named in the trust deed. They were not required, nor had they the authority, to ascertain in whom the title rested, and convey to each his interest, but to reconvey whatever title they received as they received it; and such a reconveyance delivered to any one of the numerous grantors would inure to the benefit of all, and restore to each his estate as he held it at the conveyance to the trustees. The more numerous the grantors of the trust, the more necessity there is to apply the presumption and make it conclusive.

3d. When the case was remanded to the Circuit Court for further proceedings, in conformity to the opinion of this Court,

this, the precise point upon which the case turned, and to which the special findings were directed, was not left open for further examination, either as to the facts or the law to be applied to them. In French vs. Edwards, 21 Wal. 151, the judgment of this Court is: "Judgment reversed, and case remanded, with directions to proceed in conformity to this opinion."

In Ex parte French, 91 U. S. 426, referring to this judgment, this Court says: 'Our action only precludes that Court from adjudging in favor of the defendants upon the special facts found and sent here for our opinion. In all *other* respects it is at liberty to proceed in such manner as, according to its judgment, justice may require." This agrees with the practice as established by the Supreme Court of California.

In Gunter vs. Laffan, 7 Cal. 592, the Court says: "Upon the remittur going down, however, *without any specific directions* to the Court below, the parties have undertaken to try the case *de novo*, by procuring some additional testimony, bearing on the point upon which the first decision was based. Ordinarily, such a practice would not be tolerated. After the plaintiff has come to this Court upon a Statement agreed upon as containing the facts and evidence of his case, and a judgment has been pronounced against him, going to the whole merits of the controversy, it would be exceedingly improper to allow him an opportunity to alter or change the facts upon a second trial. Such a practice would open the door to frauds and perjuries innumerable."

When a case goes up on a special finding of facts, it presents stronger reasons for holding the parties bound by them.

In Dawes vs. Soule, 14 Cal. 248, it was held that as to any question not passed upon by the Court on the former hearing, the case might be retried.

But that as to all questions before tried and passed upon, the former decision was conclusive, both as to the facts and the law; and that the facts upon which the decision rested could not be changed.

Argenti vs. San Francisco, 16 Cal. 255, 275 was an action at law, tried without a jury and sent to the Supreme Court upon special findings. The judgment was reversed, without any directions to the Court below. It was held, on the case coming up again, (30 Cal. 458–63,) that no new trial could be had, for the reason that the Court had passed upon all the issues, and it only remained for the trial Court to enter another judgment, in conformity to the opinion of the Supreme Court.

In Kinsey vs. Green, 51 Cal. 379, which was an action at

law, the Supreme Court reversed the judgment, and directed the Court below to find an additional fact, and then pronounce judgment upon the former finding, with this additional fact.

4th. We respectfully submit that when no power remains in the trustee, and no interest which can be forfeited, no re-entry is necessary to revest the title.

Police Jury vs. Reeve, 6 *Martin*, 221 (*N. S*)

Heyden vs. Stockton, 5 *Pick.* 528.

5th. If such re-entry were necessary, the fact that at the commencement of this action, some of the grantors of the trust who were in possession at the making of the deed, are found to have held the possession in hostility to the trust, was itself a re-entry, and terminated the estate of the trustees, each being remitted to his original rights.

4 *Kent*, 127.

V.

The next defense we propose to consider is founded upon a tax sale, which was declared void by this Court, on the first writ of error, *French vs. Edwards*, 13 *Wal.* 506.

The plaintiffs in error contend that, the Sheriff having made another deed, upon the same sale, they have thus evaded the decision of this Court, and are now able to have the question of the validity of the tax, and proceedings prior to the sale, examined.

As to this defense. we submit,

1st. That the amendment to the return, and the second deed, were unauthorized and void. In support of this point we refer to the opinion of the Circuit Judge, record, pages 36 to 40.

2d. Even if the reasoning of the learned Circuit Judge could be answered, there are other fatal objections to the amended return and second deed following it.

(*a*) The amendment of a return and a new deed, after the execution and delivery of one deed, can only be made to cure *a defect*, and that ought to appear from the record, especially when the officer making it has gone out of office.

McCreary vs. Sexton, 29 *Iowa*, 356 (4 *Am. Rep.* 214).

(*b*) There was no *defect* in this deed. It purported to contain a complete history of all the acts performed by the Sheriff. And whether the facts were truly stated or not, the purchaser, who was neceesarily present and knew what occurred, was estopped by the recitals in the deed which he accepted.

In French vs. Edwards, 13 Wal. 516, this Court, in passing upon this first deed, said:

"The vendee, in accepting the conveyance with this solemn declaration of the officer, as to the manner in which his power was exercised, would be estopped from denying that the fact was as recited."

(*c*) An estoppel can not be set at large at the will of the party estopped, without notice to the person entitled to its benefit; nor in any event could an estoppel of this character be avoided by the purchaser who accepted the deed without first showing that he was misled in accepting it.

(*d*) The record shows that the second return, in so far as it states or tends to show that Sheriff McClatchy made the sale in person is untrue. The first return, and the certificate of sale, show that the sale was made by a deputy, and the Circuit Judge states, at page 38 of the record, that McClatchy was examined as a witness, and stated that he had no recollection of this particular sale, and did not even recollect that he was personally present at the sale. If he was not present at the sale, or being present, did not recollect what occurred, he could not, in any event, have made an affidavit upon which an amendment could have been ordered.

(*e*) This amended return is not the return of the officer, but of the District Court. The order directs him, in terms, what to state in his return. We submit that, in no case, upon an *ex parte* application, can any other order be made by the Court, than simply permitting the officer to amend his return according to the fact, leaving him responsible for a false return.

Crocker on Sheriffs, §§ 43–6, and 861–2.

3d. Back of all these questions, the record of the tax suit shows that the judgment was void as against the owner of the land, and could not affect his title.

(*a*) The complaint, (record, page 64) shows that the assessment was made in 1864 to R. H. Vance The deed from Vance to French was recorded March 1st, 1862 (record, page 63).

The assessment as shown by the complaint could not therefore affect French's interest in the land.

Grotefend vs. Ultz, 53 Cal. 666.

Grimm vs. O'Connell, 54 Cal. 522.

Statutes 1861, p. 424, sec. 20, which agrees with the section of the Code referred to in the cases above cited, as to this point.

(*b*) The judgment is void, for that the suit does not consti-

tute a valid proceeding *in rem*. The suit *in rem* necessarily is based upon the assessment, and the record showing that the assessment was void, the judgment based upon it must necessarily be void. It can not bind French or affect his interest, for he is not a party to the suit.

Section 5 of the Statute regulating these proceedings (Stat. 1862, p. 522) provides that the publication directed to be made, shall be equivalent to personal service, and shall bind the interest of every owner and claimant thereof, whether named as a party to such action or not. But this must be read in connection with the provisions for making "unknown owners" parties when the assessment is to "unknown owners." (*Stat.* 1863, *p.* 722). This Statute, after giving the form of a complaint, in which it is averred that the property was assessed to the person named as defendant, and that he was then and there *owner*, adds to the section this proviso: "*Provided*, that if the property be assessed to an 'unknown owner,' then any fictitious name may be inserted to represent such owner as defendant."

The form given is for cases where the owner is *known*, and the assessment is made to the true owner. But if the true owner is not known to the assessor, and he makes the assessment, as he may when in doubt as to the true owner (see Stat. 1861, pp. 423–426, secs. 13 and 20), to an "unknown owner," then and only then may such "unknown owner" be sued by a fictitious name; and the publication provided for in section 5 of the Statute of 1862, shall bind the owner whether *named* as a party or sued by a fictitious name. No one can be bound who is not *made* a party, but he may be bound without being made a party by *name*, provided the assessment is made to him as an unknown owner.

By the Statute regulating the mode of making assessments (Stat. 1861, p. 423, &c), it is provided by sec. 13, that if the owner is not known to the assessor, he may make the assessment to "unknown owners." And if the assessment be so made, it is an assessment against every owner and claimant, and such owner and claimant may be sued by a fictitious name, and so be bound without being named. But if the assessor makes a mistake as to the true owner and names the wrong person as owner, and does not make the assessment to an "unknown owner," there is no authority for making the true owner a party either by name or by a fictitious name, for the suit being based upon the assessment, can embrace no one who is not in some way embraced by it.

In *Eitel vs. Foote*, 39 Cal. p. 441. the Court says: "The

Statute authorizes the suit to be brought against the owner by a fictitious name, when the property is assessed to an unknown owner (Stat. 1861, p. 721); and the complaint alleges that the real estate therein mention was assessed to unknown owners, and to all owners and claimants known and unknown."

VI.

As to the alleged Sutter Land Company Trust.

1st. The deed of April 22d, 1853, (Record, p. 52), which is the foundation of the alleged trust, assuming that it describes the land in dispute, does not change plaintiff's relation to the land so as to affect his right to recover.

On the 20th of January, 1853, L. W. Hastings and C. C. Hastings, his wife, conveyed to Weston, Vance and Breed an undivided one-half of the demanded premises. On the 20th of March, 1853, Hastings and wife conveyed to the same parties an undivided half of certain lots, parts of the same premises, which gave them the entire title to those lots. (Record, pages 50 and 51.)

Afterwards, on August 25th, 1857, L. W. Hastings and wife conveyed the interest that remained in them to Lyman Hastings; and on the 4th of December, 1857, Lyman Hastings conveyed to Edward Martin, and Martin, on July 6th, 1859, conveyed to Vance, and Vance afterwards conveyed to plaintiff, French. (Record, p. 63.) The plaintiff thus obtained the entire title to all the land except the lots that had been previously conveyed, all of which are excepted from the judgment. (Record, p. 100; see also p. 40.)

At the date of the alleged trust deed (April 22d, 1853), Vance was seized of an undivided interest in the whole land, and the conveyance made by him and his cotenants to himself and two others as trustees of the "Sutter Land Company," operated, at most, only as a declaration on his part that he held the legal title in trust for the persons composing this company, each of such persons being a tenant in common as to the equitable title; and he being one of them, had the legal and equitable title to the extent of his interest in the company.

If this company had any existence at all, it existed only as a voluntary association, and *quoad* any property rights were tenants in common.

Vance's deed to the plaintiff, therefore, passed to him an undivided interest in all the land, and entitled him to recover the

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At the date of the alleged trust deed (April 22d, 1853), Vance was seized of an undivided interest in the whole land, and the conveyance made by him and his cotenants to himself and two others as trustees of the "Sutter Land Company," operated, at most, only as a declaration on his part that he held the legal title in trust for the persons composing this company, each of such persons being a tenant in common as to the equitable title; and he being one of them, had the legal and equitable title to the extent of his interest in the company.

If this company had any existence at all, it existed only as a voluntary association, and *quoad* any property rights were tenants in common.

Vance's deed to the plaintiff, therefore, passed to him an undivided interest in all the land, and entitled him to recover the

possession of the whole, as against any but a tenant in common.

Stark vs. Barrett, 15 Cal. 371.
Touchard vs. Crow, 20 Cal. 150, 162.
Hart vs. Robertson, 21 Cal. 346.
Mahoney vs. Van Winkle, 21 Cal. 552, 583.

2d. The alleged trust deed to Breed, Weston and Vance, of April 22d, 1853 (p. 52), does not describe any land, except by reference to other conveyances without indicating what lands were embraced in those conveyances. The only fact from which it can be inferred that the lands referred to are the same as those conveyed by L. W. Hastings and C. C. Hastings, his wife, to Weston, Vance and Breed (Record, p. 50), is the statement that it is the land embraced in certain conveyances of real estate made by Charlotte C. Hastings, James Brown, L. W. Hastings and others, naming them, "and from other parties not here enumerated."

If it was intended to refer to a joint deed, it would be presumed it was the deed of all the persons named. No such deed appears.

L. W. Hastings and Charlotte C. Hastings, not being immediately associated or referred to as husband and wife, it will not be inferred that a joint deed from these two was intended.

The only other facts tending to show that it was the same land as that conveyed by L. W. Hastings to Weston, Vance and Breed, is that the supposed grantees Melvin, Sneath and Vance made a number of conveyances purporting to convey small lots, parts of those premises, in which they styled themselves "trustees of the Sutter Land Company," (Record, p. 53–4), and the statement of the Circuit Judge in his opinion (p. 35). Nor is it otherwise found that any such entity as the Sutter Land Company ever existed, than what may be found to support it in the record of the Pettit judgment, (Record, pp. 55–63) which was introduced by the defendants.

3d. Under this judgment all those portions of the premises which did not pass to Vance by subsequent conveyances, were sold and conveyed to the plaintiff. (Record, pp. 35 and 62–3.)

VII.

Some question was made at the trial as to the possession of the defendant Lincoln. The Circuit Court finds, at page 99 of the record, that he was in possession; and this Court will not review the probative facts upon which this finding is based.

But even if it did, the facts stated sustain the conclusion. *Crane vs Ghirardelli*, 45 *Cal* 235. In this case, the finding as to the defendant's possession of the premises was as follows: "The defendant Ghirardelli claimed to be in possession of the same, at the commencement of this action, and exercised acts of ownership over it, no one being in the actual possession of of it. And he made this claim and exercised these acts adversely to the plaintiff, and without right or title in himself." Held sufficient to sustain a judgment in ejectment.

In Dutton vs. Warshauer, 21 Cal. 609, 619, the Court held that the landlord of the tenant could come in and defend in the name of his tenants. And if Lincoln, without any formal substitution, assumed or accepted a position in the case, which he had a right to occupy, and from which he could not be forced, he will not be permitted, at the end, to say that he was not properly put into the position, which he has during three trials occupied without objection.

(*a*) The original findings, which, we submit, still remain in force, find the possession of all the defendants.

VIII.

It will be seen by reference to the record (pp. 51–3) that between the date of the deed from Sutter to L. W. Hastings, by which he obtained his title, and the date of the deed from L. W. Hastings and wife to Weston, Vance and Breed, a large number of small lots were conveyed to different persons; and that between May 7th, 1853, and September 28th, 1853, Melvin and Vance executed deeds of a number of lots. Some of these lots had been conveyed to the plaintiff before this action was commenced, and the title to some of them was still outstanding. The Circuit Judge, with his usual care, ascertained which of these lots, found to be in possession of the several defendants, were still outstanding, and excepted them in the judgment. (Record, pp. 40 and 100, 102.)

No question was made in the Circuit Court, and we suppose none will be made here, that any lot was included in the judgment which ought to have been excepted We will not, therefore, incumber our brief with a calculation which would be very complicated and which this Court would not examine, for the purpose of ascertaining whether the Circuit Judge, in the determination of a complicated fact, had made a mistake which,

if it existed, could have been easily corrected in the Court below.

We respectfully submit that the judgment of the Circuit Court should be affirmed.

JOHN REYNOLDS,
S. O. HOUGHTON,
Of Counsel for Defendant in Error.